

(1990) 01 KL CK 0034
In the High Court Of Kerala
Case No : M.F.A. No. 840 of 1989

R.R. Rajendra Menon (No. 2)

APPELLANT

Vs

Cochin Stock Exchange Ltd. and Another

RESPONDENT

Date of Decision : 12-01-1990

Acts Referred:

Companies Act, 1956 — Section 10, 2(11), 257
Kerala High Court Act, 1958 — Section 5

Citation : (1990) 69 CompCas 256 : (1990) 3 ILR (Ker) 863

Hon'ble Judges : L. Manoharan, J;K.T. Thomas, J

Bench : Division Bench

Advocate : Party in person, for the Appellant; Joseph Vellappally, for the Respondent

Final Decision : Dismissed

Judgement

Thomas, J.—Cochin Stock Exchange Ltd. is a company incorporated under the Companies Act, 1956 (for short "the Act"). The appellant who claims himself to be a shareholder of the said company filed a petition before the original jurisdiction of this court (company court) purportedly u/s 257 of the Act praying for a direction to the company to circulate exhibit P-2 notice among its members. The learned single judge, after finding that the petition is not maintainable in the company court, dismissed the same as per the judgment which is challenged in this appeal. According to the learned single judge, the company court has no jurisdiction to grant the relief on the petition filed by the appellant

2. Sri Joseph Vellappally, advocate, who took notice on behalf of the first respondent-company, raised a preliminary objection regarding the maintainability of this appeal u/s 5 of the Kerala High Court Act, 1958. An appeal shall lie to a Bench of two judges from "a judgment or order of a single judge in the exercise of original jurisdiction". Learned counsel contends that, as the order has sprouted from a finding that the learned single judge has no jurisdiction, it must be deemed that the order was not in exercise of original jurisdiction. The question of

jurisdiction is also a matter for the court, before which it is raised, to decide. If the court decides that question in the negative, the decision is in exercise of its jurisdiction. Hence, we hold that the appeal cannot be dismissed as not maintainable on that ground.

3. The appellant contended that the learned single judge has erred in holding that the petition filed before the company court cannot be entertained by the said court, since Section 10 of the Act confers exclusive jurisdiction on the High Court to deal with all matters arising under the Act.

4. Exhibit P-2 is a letter sent by the appellant to the assistant secretary of the company giving notice of his intention to move a resolution proposing himself as a candidate for the ensuing election to the council of management of the company. His grievance is that the said letter which is in the form of a nomination has not been circulated, as required under the article's or memorandum of the company. Assuming that the appellant has forwarded the original of exhibit P-2 letter to the assistant secretary of the company, what we have now to decide is whether the company court can be moved for a direction to circulate the said letter to the other members of the company as well.

5. Section 257 of the Act enables a person (who is not a retiring director) to be eligible for appointment to the office of director at any general meeting, if he has left, at the office of the company, a notice in writing, under his hand, signifying his candidature for the office of director, not less than fourteen days before the meeting. The appellant contends that, if the letter is not circulated, he is entitled to compel the company to do so through the company court. Section 2(11) of the Act defines "the court" with respect to any matter relating to a company (other than any offence against the Act) as the court having jurisdiction under the Act with respect to that matter relating to that company, as provided in Section 10. Evidently, a definition clause is not intended to confer jurisdiction on any particular court. The definition only gives the meaning for the word "court" wherever it appears in the statute. Section 10(1) says that the court having jurisdiction under this Act shall be the High Court except to the extent to which jurisdiction has been conferred on any district court and, in cases where jurisdiction has been conferred on the district court, the court having jurisdiction under the Act shall be the district court in regard to matters falling within the scope of the jurisdiction so conferred. The expression "the court having jurisdiction" cannot be construed as one conferring jurisdiction on a particular court in regard to all matters referred to in the Act. It is only to be understood that, whenever the Act requires a court to exercise jurisdiction on any specified matter, such jurisdiction has to be exercised by the court referred to in Section 10. In the rules framed by the Supreme Court under the Act in consultation with the High Court, provisions have been made for filing applications in the form of petitions or judge's summons. Rule 10 says that, unless otherwise provided by the rules or permitted by the judge, "all applications under the Act shall be made by a petition or by a judge's summons". Rule 11(a) enumerates the provisions of

the Act under which applications could be filed and Rule 11(b) says that all other applications shall be made by judge's summons returnable to the judge sitting in court or in chambers.

6. No provision in the Act has been brought to our notice as specifying expressly or impliedly that an application to compel a company to comply with the requirements in Section 257 will lie in the company court. The Act specifies certain questions or disputes to be resolved by the Central Government, certain others by the Company Law Board and certain matters to be dealt with by the company court. Only such matters as are specified in the Act or in the rules to be dealt with by the court could the company court deal with. The jurisdiction of the ordinary civil court can be regarded as impliedly barred in respect of those matters specified in the Act to be dealt with by the court. It cannot be held that the jurisdiction of the civil court in respect of all other matters relating to a company is barred. The corollary is that, unless a particular matter is specified in the Act to be dealt with by the company court, it cannot exercise jurisdiction merely because it is also a matter which relates to a company.

7. A Division Bench of this court has held in *The Star Tile Works Ltd., Kallai and Others Vs. N. Govindan and Others*, , that the company court has no jurisdiction in all company matters. The decision arose from a suit filed in the regular civil court for a declaration that proceedings of the annual general meeting of a company are void. One of the questions raised in the suit related to the jurisdiction of the civil court to entertain such a suit. The Division Bench held that such a relief can be granted by the civil court. The said principle was followed by M. P. Menon J. in *R. Prakasam v. Sree Narayana Dharma Paripalana Yogam* [1980] 50 Comp Cas 611 (Ker). The following observations of the learned single judge can be quoted with approval (head-note) :

"Whether for vindicating corporate rights or personal, whether representative or individual, the "action" cannot be confused with initiation of proceedings before the company court in all matters. Except in cases where the Companies Act, 1956, confers jurisdiction on the company court or some other authority like the Central Government or the Company Law Board, either expressly or by implication, all other disputes pertaining to a company are to be resolved through the forum of civil courts when the disputes are capable of being resolved by them".

8. The learned judge also observed that it is difficult to construe the definition clause u/s 2(11) or even Section 10 as one conferring jurisdiction exclusively or otherwise. Section 10 of the Act does not purport to invest the company court with jurisdiction over every matter arising under the Act. Where a wrong is done by an individual member, he could insist by recourse to a civil suit. In the said case, an application was filed before the company court for compelling the company to hold the annual general meeting, since Section 166 of the Act imposes such a duty on the company. It was held that such an application is not maintainable in the company court as the Act does not specify a matter of that

nature to be dealt with by the company court.

9. The appellant, during his arguments, referred us to a very early decision of the Allahabad High Court in *British India Corporation Ltd. and Others Vs. Robert Menzies*, wherein it was held that a company judge has jurisdiction to enforce compliance with the provisions of the Companies Act, though such power is not expressly conferred on the judge by the provisions of the Act. The said view was taken in consideration of the rules made by the Allahabad High Court under the Companies Act which was in force then. By reference, to Clause (2) of the said rules, their Lordships observed that (at page 258) :

"We take this rule to indicate that, ordinarily, proceedings for the enforcement of the provisions of the Companies Act are to be initiated by petitions presented to the court having jurisdiction under the Act"

10. Reference was also made to the decision of a Division Bench of the Madhya Pradesh High Court in *Nava Samaj Ltd. and Others Vs. Civil Judge, Class 1 and Others*, The argument raised in the said case was that the civil court has concurrent jurisdiction on matters specified in the Companies Act to be dealt with by the company court. The Division Bench held that the jurisdiction of the civil court must be deemed to have been excluded by necessary implication on the principle embodied in Section 9 of the Code of Civil Procedure. The reliefs sought for in the said suit were such as could be obtained by filing a petition u/s 398 of the Act and hence it was found that the civil court has no concurrent jurisdiction. The said decision is no authority in support of the contention that, for any matter referred to in the Companies Act, an application can be entertained by the company court.

11. We, therefore, conclude that the learned single judge has rightly found that the petition cannot be entertained by the company court. Accordingly, we dismiss this appeal.