
(1943) 07 CAL CK 0023
In the Calcutta High Court

Satish Chandra Dutt

APPELLANT

Vs

Superintendent of Insurance and Others

RESPONDENT

Date of Decision : 19-07-1943

Acts Referred:

Companies Act, 1862 — Section 91

Citation : AIR 1945 Cal 157

Hon'ble Judges : Derbyshire, C.J.;Ameer Ali, J

Bench : Full Bench

Judgement

Derbyshire, C.J.—This is a very difficult matter for us to deal with. The original petition for winding up of this company was presented as far back as 1938 and the order for winding up was made in 1941 but suspended pending the formulation and approval of a scheme. That was the result of Panckridge J.'s order dated 24th November 1941. He therein said :

The Official Liquidator does not advertise his appointment or take any further steps in the winding up for a period of two months from the date hereof within which time it will be open to the company or any other policy-holder to present any further application for the reduction of the policy contracts and that in the meantime no transfer of shares be allowed.

2. Consequent upon that the present applicant Gopesh Chandra Pal formulated a scheme for dealing with the position of the company and its policy-holders. McNair J. has rejected that scheme and directed the winding up to go on. The position of the company is that it is certainly insolvent; all its capital has been lost and more besides. It has, however, two assets of value--one of them a deposit with the Government pursuant to the Insurance Act and the other some land on the outskirts of Calcutta, which may be valuable and may be increasing in value though its actual value and its rate of increase are somewhat problematical. On the other hand there are the policy-holders who have paid their premiums and are looking forward to the fruition of their policies no doubt as a stand by in their later years. The company itself seems to have been

acquired, that is its shares have been acquired, by the Overland Bank of which the applicant Gopesh Chandra Pal is a director and is without any question acting on their behalf.

3. McNair J. considered the scheme that Gopesh Chandra Pal put forward. The learned Judge thought--and I think with a considerable amount of reason--that Gopesh Chandra Pal is not simply acting in the interests of the policy-holders or even in the interests of the company. It is the interest of the Overland Bank that he had at heart, and I have no doubt that, that heart inclines towards the land on the outskirts of Calcutta. McNair J thought that the scheme proposed was not in the interests of the policy-holders and refused to sanction it. During the argument before him, and at a very late stage of it, it was suggested that the company should be treated as a closed concern, that is, it should take in no more policies. I have no doubt that was done with a view to placating the Superintendent of Insurance who is, by reason of his statutory position, appointed to watch these matters. He is concerned with seeing that insurance companies are able to meet their contracts. I am not optimistic about what may happen to these policies. I cannot think that the Overland Bank is disinterested. When an insurance company over a number of years loses money then unless very highly skilled and efficient management is brought in there is very little prospect of it becoming successful again. There is no evidence here that fresh management is to be put in. On the other hand if there is a winding up in the ordinary sense of the word, the policy-holders may get very little. That is the position. There was a somewhat similar position, perhaps a little more rosy, in *In re Great Britain Mutual Life Assurance Society* (1881) 16 Ch. D. 246. After reciting the circumstances, Sir George Jessel M.R. said :

Under these circumstances, what ought the Court to do ? It appears to me, considering the enormous loss that will be inflicted upon these unfortunate policy-holders if we were to wind up the company, giving them each only a small fraction of the estimated value of their policies; that persons, many of whom from advancing age or infirmity may not be able to effect fresh policies in other societies will, if the company is allowed to go on with a reduction of contracts, eventually, receive the full amount of the reduced values of their policies, paying their premiums during their lives, which would be a very great benefit and advantage to them besides other advantages which they may obtain in the shape of bonuses, if the society should ultimately prove more prosperous than is anticipated, -- it appears to me that under these circumstances the Court should exercise the power given to it by Section 91, Companies Act, 1862, which enables it to ascertain the views of the real owners of the property as to the mode of disposition thereof by calling a meeting of the policy-holders, and we shall then know whether the policy-holders prefer carrying on the company with ft reduction of the amounts payable under their policies, or prefer its being wound up by what, I am afraid, is a very expensive jurisdiction, and the distribution among them of the small amount, if anything, which will then remain to be divided.

We propose therefore to discharge the winding up order; to continue the appointment of... provisional liquidator . . . and to order this appeal to stand over to... by which time the wishes of the policy-holders will have been ascertained.

4. I think that is one of the lines that we ought to take in this case. The property which this company owns, it owns for the benefit of the policy-holders and although I must confess I have not much faith in meetings either of creditors, share-holders, or policy-holders, I think we ought to follow the precedent laid down in *In re Great Britain Mutual Life Assurance Society* (1881) 16 Ch. D. 246. I cannot however close my eyes to the fact that all did not go well afterwards in that case as will be seen from a perusal of *Palmer's Company Precedents*, Edn. 15, Part 1, p. 1146, where after a scheme had been drawn up to meet the wishes of the policy-holders, an agreement was made with another company, under which that company undertook to receive the premiums, and in consideration of a commission, apply them in paying the claims as they matured. However, this is a matter in which, as I have said, I think the policy-holders ought to be consulted, especially as they have not been consulted. The scheme which is now proposed by the applicant Gopesh Chandra Pal is not the same scheme as before *McNair J.* It is a closed scheme, so that the matter must begin de novo.

5. I am of the opinion that the applicant should be given leave to prepare an amended scheme treating this insurance company as a closed company, that is taking in no more policies. This scheme should be devised so that it provides for the different kinds of policy-holders. When that has been done that scheme should be forwarded to the Superintendent of Insurance so that he may with his actuary give his criticisms thereon. That scheme together with the Superintendent of Insurance's criticisms should be placed before a meeting of the policy-holders to be convened by the liquidator at some date of which they should be given notice. At the same time I think it would be well for the liquidator to ascertain from other insurance companies in Calcutta who have a similar kind of business whether and on what terms they would be prepared to take over these policies on a reduced basis in consideration of being allowed to take over property and assets which the company has. It may be that there are some insurance companies which would do that. It may be that the result of that would be better from the policy-holder's point of view than a scheme for carrying on such as has hitherto been proposed or a piecemeal winding up, but it is for the policy-holders to choose.

6. I am of the opinion that this appeal should be treated in the same way that the appeal was treated in *In re Great Britain Mutual Life Assurance Society* (1881) 16 Ch. D. 246, namely, that it should stand over until the wishes of the policy-holders on the lines indicated have been ascertained. When this information is received, the matter will be reported to us on which we will give such directions as to us seem proper. Mr. B.C. Ghose who I understand is a policy-holder may act as chairman at the meeting of the policy-holders but it will be for the liquidator to call the meeting. In the meantime the assets of the company

will not be parted with except as ordered and the liquidation proceedings will be stayed. The Superintendent of Insurance will get his taxed costs. Certified for two counsel.

Ameer Ali, J.

7. I agree with the course proposed by my Lord the Chief Justice. As we are however to some extent diverging from the course actually taken in the case referred to, at any rate as to the order of affairs, I take the liberty of suggesting that with the amended scheme or as part of the amended scheme which will be put before the policy-holders there should be a section containing the conditions which the original applicant -- not the appellant here -- would be prepared to abide by, conditions as regards the directorate and as regards management, with an indication of how it is proposed, in the form of a budget or scheme, to run the company on a reduction. That also, if I may suggest, should be put before the policy-holders as an integral part of the scheme of reduction.