
(1981) 04 GAU CK 0001
In the Gauhati High Court
Case No : Company Petition No. 1 of 1979

Smt. Bina Barua and Others	Vs	APPELLANT
Dalowjan Tea Co. (P.) Ltd. and Others		RESPONDENT

Date of Decision : 21-04-1981

Acts Referred:

Companies Act, 1956 — Section 108, 109, 110, 111, 155

Citation : (1981) 04 GAU CK 0001

Hon'ble Judges : K.N. Saikia, J

Bench : Single Bench

Advocate : P. Chaudhuri and A.R. Banerjee, for the Appellant; D.N. Chowdhury and S.N. Chetia, Jr. Central Govt. standing counsel, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Satkta, J.—This is a company petition u/s 155 of the Companies Act, 1956 (hereinafter " the Act"), for rectification of the register of members.

2. Late, Dhrubajyoti Barua, husband of petitioner No. 1 and father of petitioners Nos. 2 and 3, who owned 900 equity shares in the Dalowjan Tea Company (Private) Ltd. (hereinafter " the company ") died on September 5, 1973, intestate. The District Judge, U.A.D. at Jorhat, appointed petitioner No. 1 as the guardian of her son and daughter, petitioners Nos. 2 and 3, and all the three now reside at Shillong. Petitioner No. 1 obtained on July 26, 1974, a succession certificate but it did not cover the 900 shares of late Dhrubajyoti Barua in the company. Petitioner No. 1 having applied for extension of the certificate u/s 376 of the Indian Succession Act, the extension was granted on June 8, 1977, so as to include the 900 shares (annex. A). On receipt of the extended certificate the petitioner No. 1 wrote to the company on August 5, 1977, requesting it to pay the outstanding dividends as well as to record her name in the register of members in place of her husband; but the latter by letter dated August 19, 1977, informed her that the letter would be placed in the next meeting of the board of directors. By letter dated January 25, 1978, the managing director informed that

the matter could not be discussed in the meeting of the board of directors on September 10, 1977, as many of the senior directors were not present, and petitioner No. 1 was requested to send a certified copy of . the succession certificate in respect of the 900 shares ; and the same was accordingly sent. Petitioner No. 1 meanwhile wrote to the Registrar of Joint Stock Companies complaining about the non-receipt of dividends and non-transfer of shares; and from a copy of the Registrar's letter dated May 1, 1978, she learnt that the board decided not to transfer the 900 equity shares to her. The Registrar also forwarded a copy of the company's letter dated February 18, 1978, along with a copy of the extract of the resolution adopted in the company's board meeting held on February 13, 1978, which runs as follows :

" Item No. 1

(b) The following letters regarding the application of Shri Bina Barua for transfer of shares were placed before the meeting. Letters (1 to 9) correspondence amongst Smt. Bina Barua, Registrar of Companies and the managing director, Dalowjan Tea Company.

The matter was fully discussed and the board considered the question of the share transfer from all angles, viz., long-term interests of the company, circumstances leading to the tragic death of late Shri Dhrubajyoti Barua and in the interests of the two minor children, Shri Rukmashyam Barua and Smt. Rukmini Barua, it was unanimously resolved that no action should be taken for the transfer of the shares of late Shri Dhrubajyoti Barua.

It was further resolved that the dividend pertaining to the shares held in the name of late Shri D.J. Barua be kept in the unpaid dividend account of Dalowjan Tea Co. (P.) Ltd. "

Thereafter, she served a lawyer's notice which was replied to by the company on May 27, 1978, stating that the board resolved not to transfer the shares to her in exercise of its powers under the articles of the company ; it was not bound to transfer the shares simply because a succession certificate had been obtained ; and that there was no court order to transfer the shares under the Act, and in taking the above decision the board was only actuated by the long-term interests of the company and its members and the board kept the interest of the minor children of the deceased in view, in taking all decisions, including the one on the dividend according to the shares held by the deceased. Hence this petition for rectification of the register of members.

3. Articles 36 to 39 deal with transmission of shares which read as follows:

" 36. If any share of a member is attached under a process of a court for a liability of the member, all or any of the other members of the company shall be entitled to pay off the debt, and, on his or their doing so, shall have a lien on the share so released for the debt and interest at the rate of one per cent, per month till the debt is paid off; and all dividends and bonuses payable on the share

released shall be paid to the member releasing the share in payment of the debt and interest that remain unpaid ; and if the amount remains unpaid for three years, the member or members releasing the share shall be entitled to recover the same by legal proceedings.

37. In the case of the death of a member the survivors or survivor, where the deceased was a joint holder, and the heirs or executors and administrators of the deceased, where he was a sole or only surviving holder, shall be the only person recognised by the company as having any title to his shares, but nothing herein contained shall release the estate of a deceased joint holder from any liability in respect of any share jointly held by him.

38. Any person becoming entitled to a share in consequence of the death or insolvency of any member may, upon producing such evidence of title as the directors shall require, with the consent of the directors, be registered himself as holder of the share, or subject to the provisions as to transfers herein contained, transfer the same to some other person.

39. A person entitled to a share by transmission shall be entitled to receive, and may give a discharge for any dividends or other moneys payable in respect of the share, but he shall not be entitled in respect of it to receive notices of, or to attend or vote at meetings of the company, or save as aforesaid, to exercise any of the rights or privileges of a member, unless and until he shall have become a member in respect of the share. "

Mr. P. Chaudhuri, the learned counsel for the petitioners, states that the company has not paid the dividends and has not entered petitioner No. 1's name in the register of members. The company also has not directly informed her that her application for transfer was rejected; she only learnt about it from the Registrar of Companies; and that she has no other remedy except by this application u/s 155 of the Act. Counsel relies on Articles 36 to 39 of the articles of association (for short, " the articles ") which have been quoted above.

4. Counsel, inter alia, submits that the above articles put no restriction on transmission and leave no discretion with the board of directors, and even if there is any restriction, the same has to be strictly construed ; the power to refuse registration of transfer is a discretionary power and the directors must exercise it reasonably and in good faith ; it is open for this court to control their discretion if they act capriciously or in bad faith ; under Article 37 heirs and legal representatives of a deceased member must be recognised and registered ; the expression "with the consent of the directors " in the context of the present transmission, the legal heirship of the petitioners being not disputed, leaves no power with the board of directors not to consent, and that consent should come as a matter of course; the board of directors having taken extraneous matters into consideration, acted mala fide, arbitrarily and capriciously in refusing registration and the court should order rectification of the register accordingly.

5. Mr. B. Barua, the learned counsel for the respondents, answers that the

company being a private limited company, the articles have put restrictions on transfer of share; Section 111 of the Act gives the directors ample power to refuse to register a transfer or transmission by the operation of law ; and that the board of directors have acted bona fide in the interest of the company and the minor children and not arbitrarily or capriciously. Counsel further submits that the petition does not show any cause of action at all ; and in her petition, in paras. 15 to 19, she claims the entire 900 shares which she is not entitled to, and the board while resolving not to transfer took all the facts and circumstances into consideration, particularly the interest of the company and of the minors, and this court should not order rectification of the register of members, as prayed.

6. The precise question requiring judicial determination is whether on a proper interpretation of the relevant provisions of the Act and the articles and taking into consideration the facts and circumstances of the case, the board of directors was justified in withholding consent to record the transmission to petitioner No. 1 on the basis of her application authenticated by the extended succession certificate.

7. The articles put restrictions on transfer, but the instant case is one of transmission and not of transfer. "Transmission" means passing on or devolution by operation of law while " transfer " means conveyance by act of a member, i. e., a voluntary act of the parties.

8. Section 111 of the Act provides that nothing in Sections 108, 109 and 110 shall prejudice any power of the company to refuse to register the transfer of, or the transmission by the operation of law of the right to, any share or interest of a member in the company. It also provides for an appeal against the refusal, in case of transfer or transmission by the. operation of law in public limited companies or their subsidiaries. We have noted Article 37 of the company. In the instant case, the deceased, Dhrubajyoti Barua, was the sole holder of the 900 equity shares and as such his heirs are to be recognised as persons having title to his shares and under Article 38 the petitioners becoming entitled to these shares in consequence of his death may upon producing such evidence of title as the directors shall require, with the consent of the directors, register themselves as holders of the shares, or may transfer the same to some other person. Under Article 39 a person entitled to a share by transmission shall be entitled to receive, and may give a discharge for any dividend payable in respect of the shares.

9. The requirement under the articles is that the transmission has to be registered with the consent of the directors. "Consent" means to acquiesce, to approve, to give permission to something proposed or requested. It means agreement in sentiment, accord of minds, to give assent to or to grant. The consent is to be given by a resolution of the board of directors. The power of refusing to register a transfer or transmission is a discretionary power and must be exercised reasonably and bona fide and for the company's benefit and not

arbitrarily, though in the absence of evidence to the contrary, the power will be presumed to have been properly exercised : [Berry and Stewart v. Tottenham Hotspur Football and Athletic Co. [1936] 3 All ER 554 : [1935] 5 CompCas 472]. Where there are several grounds on which the power can be exercised, the directors are bound to state on which ground they act, unless excused from so doing by the articles, although they need not in any case give the reasons which influenced them in exercising their discretion on that ground. As was ruled in Sutherland Duke v. British Dominions Land Settlement Corporation [1926] Ch 746 (Ch D), where the directors' consent is required to a transfer, they must exercise their powers as trustees for the company and a consent given corruptly for their own benefit may be treated as a nullity. If the directors had given their reasons, the court will examine them, but will not overrule the decision of the directors because it disagrees with the conclusion they reached as to the advisability of refusing the transfer: [Re Bell Brothers : Ex parte Hodgson [1891] 65 LT 245 (Ch D), Re Bede Steam Shipping Company Ltd. [1917] 1 Ch 123 (CA). It will, however, do so if the directors have acted on a wrong principle.

10. The basic principle underlying the right to transfer or transmission, as was pointed out in Re Copal Varnish Co, Ltd. [1917] 2 Ch 349 (Ch D), is that " a shareholder, whether in a public or in a private company, has a property in his share which he has a right to dispose of, subject only to any express restriction which may be found in the articles of association of the company ". In case of transmission also the directors have to abide by the provisions of the articles which form part of the agreement with the deceased shareholder. The right of ownership over the shares held by the deceased, Dhrubajyoti Barua, if devolved on the petitioners, the board of directors has to consider the legal rights of the petitioners who are now applying to have the register rectified. The above principle is as applicable to a private company which by definition puts restrictions on transfer of shares as to a public company which does not put any such restriction on the right to transfer. The property in the shares of Late Dhrubajyoti Barua, if devolved on the heirs, the heirs have a right to get their names registered in his place subject, of course, to the consent of the directors.

11. The above principles have been further enunciated by their Lordships of the Supreme Court. In Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunhunwala and Others, it was ruled that rectification of the register u/s 155 can, therefore, be granted only if the transferor establishes that the directors had, in refusing to register the shares in the names of a transferee, acted oppressively, capriciously or corruptly, or in some way mala fide and not in the interests of the company. Such a plea has, in a petition for rectification, to be expressly raised and affirmatively proved by evidence. Normally, the court would presume that where the directors have refused to register the transfer of shares, where they have been invested with absolute discretion to refuse registration, the exercise of the power was bona fide. When the new Companies Act was enacted, it was well settled that the discretionary power conferred by the articles of association to refuse to register would be presumed to be properly exercised and it was for the

aggrieved transferor to show affirmatively that it had been exercised mala fide. Section 111 of the Act, it was observed, has provided a right of appeal against an order of refusal, but the power to entertain an appeal is not unrestricted being an alternative to the right to approach the civil court. It must be subject to some limitation which are implicit in the exercise of the power of the civil court u/s 155. The Central Govt. may, therefore, exercise the power to order that the transfer which the directors have in their discretion refused to register, if it is satisfied that the exercise of the discretion is mala fide, arbitrary or capricious and that it is in the interests of the company that the transfer should be registered. Under Sub-section (5) of Section 111, however, no appeal lies against a refusal to register the transfer or transmission of shares in a private company, not being a subsidiary of a public company. The remedy by way of appeal is, therefore, not available to the present petitioner.

12. The above principles were reiterated in *Bajaj Auto Ltd. Vs. N.K. Firodia and Another etc.*, where it was ruled that the directors' discretion in regard to declining registration of transfer of shares, does not mean a bare affirmation or negation of a proposal, but implies its just and proper consideration in the facts and circumstances of the case. In the exercise of that discretion the directors will act for the paramount interest of the company and for the general interest of the shareholders, because the directors are in a fiduciary position both towards the company and towards every shareholder. The directors are, therefore, required to act bona fide and not arbitrarily and not for any collateral motive. It was further ruled that if the articles permit the directors to decline to register a transfer of shares without stating the reasons, the court would not draw unfavourable inferences against the directors because they did not give reasons. In other words, the court will assume that the directors acted reasonably and bona fide and those alleging to the contrary would have to prove and establish the same by evidence. Where, however, the directors gave reasons the court would consider whether they were legitimate and whether the directors proceeded on a right or wrong principle. The reasons of the directors, it was observed, have to be decided from three points of view. First, whether the directors acted in the interest of the company; secondly, whether they acted on a wrong principle; and, thirdly, whether they acted with an oblique motive or for a collateral purpose. The discretion of the directors would be nullified if it were established that they acted oppressively, capriciously or corruptly or in some other way mala fide. If the court found that the directors gave reasons which were legitimate, the court would not overrule that decision merely on the ground that the court would not have come to the same conclusion.

13. There is no dispute as to the law. The difficulty is only in their application to the facts and circumstances of a particular case. In *Bajaj Auto Ltd. Vs. N.K. Firodia and Another etc.*, on the facts and circumstances of that case it was held that the directors did not act bona fide nor did they act in the general interest of the company but on the contrary they acted upon a wrong principle and for an oblique motive. There, the Firodia group lodged in different lots 3,643 shares of

the appellant for being transferred to different names. Jaya Hind Industries Private Ltd. applied for transfer of 1,500 shares in their names. The other transfers were in the names of associates, nominees and friends of the Firodia group. The board of the appellant refused to register the transfer of the said shares on three reasons. First, it was evident that Firodia's design was to create mischief. Secondly, it was part of the design to acquire interest in the company which was likely to result in threat to the smooth functioning of the management of the company and to vote down the passing of a special resolution required for the management of the company, and, thirdly, the purchase of shares by Jaya Hind Industries (P.) Ltd. was not with a view to bona fide investment but was with a mala fide purpose and evil design. On the aforesaid grounds, the directors came to the conclusion that it was in the interest of the company to refuse the said transfers. Their Lordships of the Supreme Court held that the power was not exercised bona fide, but with oblique motive or for collateral purpose.

14. Mr. Barua heavily relies on the decision of the Madras High Court in *M.G. Amirthalingam v. Gudiyatham Textiles P. Ltd.* [1972] 42 CompCas 350 (Mad), where the petitioner's father, Govinda Raja Mudaliar, died on September 6, 1964, leaving a will bequeathing his shares to the petitioner, who obtaining a succession certificate wanted the company to transmit the shares, but the directors declined. The reason given was that in the opinion of the directors, in view of the activities of the petitioner, the transmission would be against the interests of the company. The petitioner was also informed that the company was agreeable to purchase the shares in question at the prevailing value. The facts of the case showed that when the petitioner's father died, the respondent-company was functioning as the managing agent of Rajeswari Mills Ltd. The agreement under which the said managing agency was created was to expire on 15th August, 1965. The petitioner was appointed as the director-in-charge of the day-to-day management of the Rajeswari Mills after the death of his father. In that capacity, he called for a meeting of that company on November 11, 1964, and a resolution was passed in that meeting removing the first respondent-company from the office of managing agents. The petitioner got himself appointed as the managing director. This gave rise to the institution of a suit, O.S. No. 132 of 1964, on the file of the Sub-Court, Vellore, by the first respondent-company challenging the action of the petitioner in passing the resolution. Certain shareholders of Rajeswari Mills themselves questioned the validity of the resolution and instituted O.S. No. 140 of 1964, on the file of the same court for certain reliefs. Alleging that the action of the petitioner in causing the removal of the first respondent from being the managing agents had caused substantial loss to the first respondent-company, the first respondent-company instituted O.S. No. 132 of 1964, claiming damages against the petitioner and Rajeswari Mills Ltd. It appears that the said suit has been dismissed so far as the petitioner is concerned, but had been decreed for a smaller amount than the amount claimed as against Rajeswari Mills Ltd. It was represented on behalf of the respondent that the first respondent-company was intending to file an appeal not only with

regard to the disallowed portion against the Rajeswari Mills but, also against the petitioner. Several litigations were started by the petitioner against the company. It was also submitted that the petitioner, even after being registered as a member, would be in a minority. On those facts, the learned single judge observed that the board of directors of the company had taken into consideration the relevant considerations and came to the conclusion that the activities of the petitioner were against the interest of the company and that it was not desirable to permit the transfer of his father's shares to his own name.

15. In *Indian Chemical Products Vs. State of Orissa and Another*, where in pursuance of an agreement, consequent upon the merger of the State of Mayurbhunj into the Dominion of India, the State of Orissa succeeded to the properties purchased by the Maharaja of Mayurbhunj in his capacity as the ruler and the title to the shares so purchased vested in the State and on an application the board of directors refused to recognise the transfer, it was held that the board of directors had no power to refuse rectification of register of shareholders and that Article 11 of the company did not empower the directors to refuse rectification. Before the High Court, the company asserted that the registration was refused because the Maharaja of Mayurbhunj was under an obligation to execute an agreement conferring valuable rights on the company and the State of Orissa had failed to honour that obligation. Rejecting the assertion it was held that the directors could not use their power to decline to register the transfer under Article 11 for the purpose of forcing the State of Orissa to enter into the proposed agreement.

16. The above principles are to be applied to the facts of the present case.

17. The board's resolution said :

" The matter was fully discussed and the board considered the question of share transfer from all angles, i. e., long-term interests of the company, circumstances leading to the tragic death of Dhrubajyoti Barua and the interest of the two minor children, Shri Rukmashyam Barua and Smt. Rukmini Barua. It was unanimously resolved that no action should be taken for the transfer of the share of late Dhrubajyoti Barua to Smt. Bina Barua."

In their reply to the Lawyer's notice (annex. M), the company, in effect, informed about the board's resolution.

18. Mr. Barua places the affidavit-in-opposition on behalf of the company affirmed by its managing director wherein it is stated with reference to the averments in para. 4 of the petition in respect of the sad demise of late Dhrubajyoti Barua on September 5, 1973, that the late Barua took his own life in the early morning on September 5, 1973. Earlier, he accompanied by petitioner No. 1 left Golaghat some time in the middle of August, 1973, and thereafter it was learnt that Dhrubajyoti Barua came to Gauhati accompanied by petitioner No. 1. It was also learnt that there was a strong difference of opinion between the two causing serious misunderstanding in which late Dhrubajyoti Barua left

Gauhati alone leaving his wife in the evening on September 4, 1973, and, consequently in the early morning of September 5, 1973, he took his own life. Golaghat police registered an U. D. case bearing Case No. 58 of 73 dated September 5, 1973, and in connection with his death a few articles were seized by the Golaghat police from the possession of the deceased including two letters left by Dhrubajyoti Barua, one addressed to his mother and the other addressed to his wife, i. e., petitioner No. 1 and these letters were seized by the police. It is stated that these two letters were seen by almost all the family members. By the letter dated September 5, 1973, addressed to his mother the deceased expressed his unhappiness with the conduct of his wife, i. e., petitioner No. 1, and further expressed that he left his wife for good and requested his mother not to accept her in the family home and to take care of the children and that if she did not look after the children, his soul would not rest in peace. It is stated that by the other letter addressed to petitioner No. 1, the deceased insisted her not to come again to the family home and asked her to live with her own companion. It is reiterated in the affidavit that the board of directors fully considered all the facts and circumstances regarding the transfer of the shares, the company's interest and also the minors' interest. The board also took into consideration the surrounding circumstances leading to the death of Dhrubajyoti Barua--one of the leading members of the company, who also happened to be a close relative of the directors, and also the interest of the minors. Taking all the facts into consideration the board resolved not to transfer the share of late Dhrubajyoti Barua in favour of petitioner No. 1 and further resolved that the dividends pertaining to the share be kept in the unpaid dividend account of the company and that these reasonings were sufficient for not registering her name and there was no improper motive and/or corrupt and arbitrary conduct on the part of the directors for refusing to register her name. It is further stated that the resolution of the company was bona fide and/or was taken in the interest of the company for the greater interest of the minor children, and that after deducting the taxes at source a sum of Rs. 3,854.95, being the dividend on the 900 shares, had already been deposited towards the unpaid dividend account u/s 205A of the Act, in the name of Dhrubajyoti Barua and in accordance with those rules another instalment was remitted for deposit in the said account.

19. In her affidavit-in-reply, petitioner No. 1 states that she was denied entry into the family house of her late husband, and she denies the allegation made in para. 6 of the affidavit-in-opposition and asserts that her relationship with her husband was extremely cordial and loving and she had no difference of opinion or misunderstanding as alleged ; that she is unaware of the circumstances resulting in the death of her husband on September 5, 1973, and that the death of her husband is still a mystery to her. She further asserts that no letter addressed to her or to her mother-in-law by her deceased husband, as alleged, were ever handed over to her nor she had seen those or known the contents thereof till date. She does not admit that those letters were written by her husband. Three factors thus appear to have weighed with the board in refusing

to register as prayed, namely, (1) the long-term interests of the company, (2) the circumstances leading to the death of Dhrubajyoti Barua, and (3) the interests of the two minor children. It is not clear how the interest of the company will be directly affected by recording the transmission. In *Amirthalingam's case* [1972] 42 CompCas 350 (Mad), the activities of the petitioner were held to be against the interests of the company as his conduct vis-avis the company resulted in loss of profit and litigations. In the instant case, there has been no such allegation. It has been repeatedly held that the board of directors are empowered to refuse to record the transfer or transmission when so required in the interests of the company. What will be comprehended within this concept? Interpreting the expression "in the interest of" as used in art 19(2) of the Constitution, it was held in *Ramji Lal Modi Vs. The State of U.P.*, that the expression is of wide connotation, and in the context of public order, it is wider than the words like "for the maintenance of" and it authorised the Legislature to restrict an act or utterance which not only produces the mischief aimed at, e.g., breach of public order or security of the State, but also those which have a tendency to cause that effect, but which may not actually lead to a breach-of public order. If such a wide connotation is put in the instant case, it may comprehend not only the loss or injury suffered by the company in the past, but also reasonable apprehensions of such effects. A possible mismanagement and disharmony and even investigation and wind-ing-up proceedings may be said to be included. If such an interpretation is accepted, the relationship between the petitioners and the present shareholders may become relevant. The circumstances under which the late Dhrubajyoti Barua died, as depicted by the respondents and denied by petitioner No. 1, leave no doubt that petitioner No. 1 may no longer be acceptable as a member of her deceased husband's family. On the other hand, petitioner No. 1's view-point has also to be considered, she having lost her husband. It should be appreciated that a private limited company is not synonymous with a family business. All those allegations would not disentitle her to inherit the shares from her deceased husband. Those factors ipso facto cannot be said to affect the interests of the company.

20. In the extended succession certificate the entire 900 shares of late Dhrubajyoti Barua are included and according to its tenor petitioner No. 1 is empowered to receive interest or dividends, to negotiate or transfer and both to receive interest or dividends and negotiate or transfer securities or any of them. This ipso facto does not envisage any interest being inherited by petitioners Nos. 2 and 3. In her application (annex. C), the petitioner No. 1 said: "now in view of the succession certificate you are bound to provide me the dividends including arrear dividends and other entitlements. The shares of my late husband are to be immediately transferred to my name". In her letter dated September 20, 1977 (annex. E), to the Registrar, she mentioned about the transfer of the shares to her name. Thus, it appears that petitioner No. 1 has all along been insisting that the entire 900 equity shares be transferred to her name alone.

21. Under Article 37 the heir of the deceased, where he was a sole or only

surviving holder shall be the only person to be recognised by the company. To ascertain the heirs of the deceased, the Hindu Succession Act has to be applied. u/s 8 thereof the property of a male Hindu dying intestate shall devolve, firstly, upon the heirs, being the relatives specified in class I of the Schedule which include son, daughter, widow and mother. Thus all the petitioners and the mother may be the heirs of the deceased. The succession certificate, however, has been obtained only in the name of petitioner No. 1 in respect of the entire 900 shares. It will not be consistent with Article 37 to allow all the shares to be registered in her name alone. The fact that she is the guardian may not enable her to appropriate their shares. In *Kasiviswanathan Chettyar v. Indo Burma Petroleum Co. Ltd.* [1936] 6 CompCas 42 : AIR 1936 Rang 52 , where under the articles, the company had a right and duty to recognise only the executors or administrators of the deceased member and the heir of the deceased member claimed the shares by right of survivorship, it was held that the company could rightly ask the claimant to produce a probate or a succession certificate. It was observed that a member of the company and those claiming through him were bound by the articles of association which formed a contract between them, and in any case in which the company and its directors literally and bona fide carry out the provisions of the company's articles of association, it or they can never be said to be acting without cause. So also in *In re In Re: New Monkhooshi Tea Co. Ltd. and Others*, the mother and her two minor sons were joint holders of 600 shares of a company which issued bonus shares. A letter of allotment was issued indicating that the said three persons were jointly entitled to the bonus shares. The company, however, in fact issued a share certificate in the name of the mother only. The mother made a gift of the bonus shares to her daughter, but did not execute any transfer deed in her favour. On the death of the mother, the daughter obtained a succession certificate for the shares and later on claimed rectification of the share register. Held, that the Succession Act read with the Companies Act did not compel the company to act on the succession certificate as obtained in this case. The statute again does not state that the company is bound to act on the succession certificate though the properties did not belong to the estate of the deceased.

22. In the instant case, when there are more than one heir and the succession certificate enables one alone to have all the shares, if all the shares are so registered, it will be violative of Article 37 and will be detrimental to the interests of the other heirs, including the two minor heirs, who are petitioners before this court, but no application for registration of their names appears to have been made to the company. Under the circumstances, it cannot be said that the directors acted arbitrarily, capriciously or mala fide in refusing to register the transmission as prayed for by petitioner No. 1 on the strength of the succession certificate. Had petitioner No. 1 applied for registration of the shares inherited by her alone in her name, the matter would have been different.

23. In the present petition, the petitioners pray for entering the name of petitioner No. 1 and/or the names of the petitioners in the register of members,

but this was not the prayer made before the company. It was also not the tenor of the succession certificate.

24. Mr. Barua states at the bar that the directors have no intention whatsoever to deprive the minor heirs of their legitimate shares and will register their names if required. It is now incumbent on the directors, if required, to register the names of the heirs, including petitioner No. 1 to the extent of their respective shares. The heirs, if they need, shall be entitled to receive, and may give discharge for any dividends paid to them in view of Article 39 of the articles.

25. For the foregoing reasons, this court refuses to direct rectification of the register of members, so as to register the entire 900 equity shares of late Dhrubajyoti Barua in the name of petitioner No. 1 alone, as was prayed ; and leaves it open for the directors to register the names of the heirs of late Dhrubajyoti Barua, including petitioner No. 1 in his place, to the extent inherited by each, if required by the heirs.

26. In the result, with the above observations, this petition is rejected, but under the peculiar facts and circumstances of the case, without costs.