
(1907) 01 BOM CK 0001

In the Bombay High Court

Case No : Appeal No. 1444 in Original Suit No. 400 of 1906

Soolleman Somji

APPELLANT

Vs

The Bank of Bombay

RESPONDENT

Date of Decision : 22-01-1907

Acts Referred:

Specific Relief Act, 1877 — Section 45

Citation : (1907) 9 BOMLR 165

Hon'ble Judges : Chandavarkar, J;Batty, J

Bench : Division Bench

Judgement

Chakdavarkar, J.—The question in this appeal is, whether the appellant, who is a registered holder of one share of the respondent Bank, has, as such, the right to inspect its register of share-holders. Scott J., by whom the appellant's suit for a declaration of the right and an injunction was heard, has dismissed the claim, on the ground that at the date of the suit there was no "specific dispute or question depending," in which the appellant was interested, to entitle him to the inspection, but that his sole object was "to cause annoyance to the Bank officials and particularly to Ahmedbhoy Hubibbhoy, who is one of the directors."

2. Before us, as it was before Scott J., the appellant's case has been put upon the ground of a common law right possessed by every member of a corporate body. According to Section 4 of Act XI of 1876, the respondent Bank is a body corporate, possessing and enjoying "all the rights, powers and immunities incident by law to a Corporation aggregate, subject nevertheless to the provisions of this or any other Act for the time being in force regulating the Bank." By Section 22, "the proprietors and share-holders for the time being and no other persons" shall be members of the corporate body constituted by the Act.

3. It is not disputed before us, as it was not disputed before Scott J., that every member of a Corporation has the right under common law to inspect its books and records. That the right exists is clear from Gery v. Hopkins (1796) 7 Mod. Hep. 129, Rex v. The Fraternity of Hostmen (1795) 2 Stra. 1221 and The King v.

Merchant Tailors" Co. (1831) 2 B. & Ad. 115.

4. And such right does not cease merely because a Corporation is created by a statute which does not confer the right, unless the statute expressly excludes it: *Heslop v. The Bank of England* (1833) 6 Sim.192.

5. The question, which we have to decide, is, whether the right is absolute or qualified : and, if it is a qualified right, what are its limitations and qualifications. For the respondent Bank it is argued before us that the right is limited to cases where inspection is necessary as being incidental to some suit or proceeding pending in a Court. On the other hand, for the appellant the contention is that every member of a Corporation is entitled to inspect the register of its members for the purpose of exercising rights which are conferred upon him by the Act of its constitution.

6. In *Gery v. Hopkins*, there was a cause pending between two parties, both having stock in the East India Company, concerning which the action was brought. And it was ordered that the book of the transfer of stocks and other books of the Company might be produced at the trial or that the parties might have copies of what part of them they pleased to give in evidence. The Court said :-" There is great reason for it, for they are books of a public Company and kept for public transactions in which the public are concerned ; and the books are the title of the buyers of stocks by Act of Parliament."

7. In *Rex v. The Fraternity of Hostmen*. a member of the defendant Corporation claimed the right to inspect one of its books for the purposes of a dispute which he had with third parties. The Corporation resisted the claim upon the ground that it was no party to the dispute. But the Court held that that did not matter; "every member of the Corporation had, as such, a right to look into the books for any matter that concerned himself, though it was in a dispute with others". The right, however was held to be qualified by the rule that the inspection should be "for a particular purpose" and that it should be confined to the book required for that purpose.

8. This case of *Rex v. The Fraternity of Hodmen* must, I think, be taken to have decided that a member of a Corporation has, as such, the right to inspect any of its books provided he has a definite object or specified purpose in which he is interested and provided also that an inspection of the book which he requires is necessary for that purpose. It is only an accident that in that case the member who claimed the inspection desired it for the purposes of a dispute actually pending between him and third parties. But the ratio of the decision as I understand it, is not limited by that consideration but covers a wider ground. The ratio is that a member of a Corporation as such is entitled to the inspection of any of its documents, if he satisfies the Court that he is seeking inspection not from mere idle curiosity or for some speculative purpose but that he has some reasonable and definite object, in which he is interested and for which the inspection is required, whether that definite object concerns or not any subject

then actually in controversy or discussion. This is the principle I gather from *Rex v. The Fraternity of Hostmen*.

9. The same principle follows, in my opinion, from *Rex v. The Merchant Tailors' Co.* (1831) 2 B. & Ad. 115. As the decision in that case forms the basis of Scott J.'s judgment, now under appeal before us, the facts of it and the reasons given by each of the learned Judges, who decided it, require close examination for the purpose of ascertaining the rule of law to be deduced from it. Inspection was there claimed of all the documents, books and records of the Corporation. The Corporation admitted that every member of it had the right to inspect its "register of apprentices and free men" but denied his right to other books, documents and records. The members, who claimed the right to inspect all the books, documents and records of the Corporation, specified no purpose other than the vague one that they wished to find out if its affairs were properly conducted. Under those circumstances the Court held that the claim was novel and that, if allowed, it would lead to "great inconvenience and much expensive litigation." But Lord Tenterden C.J. also observed, "in all the cases, where a mandamus had been granted, the application had been limited by some legitimate and particular object, in which the party had an interest." He referred to the cases and no doubt in each of them there was some dispute pending; in some the inspection was for the purposes of suits instituted, in others there was some existing controversy for which inspection was required. But Lord Tenterden relied upon them to illustrate his view that there must be "a particular occasion with reference to which the inspection should be granted." To the same effect is the judgment of Little Dale J. According to him, a member of a Corporation has "no right on speculative grounds to call for an examination of the books and muniments;" but the right comes into force "if a proper occasion is made out in a matter affecting the members of the Corporation." Taunton J. held that "there should be some particular matter in dispute between members, or between the Corporation and individuals in it; there must be some controversy, some specific purpose in respect of which the examination becomes necessary," and that "any particular grievance should be stated." Patterson J. is even more clear. After observing that, in his opinion, the rule must be discharged because of "the generality of its terms," he goes on to say :- "I am far from saying that there may not be particular instances in which a corporator may apply for a mandamus to inspect documents, or some of them, or the kind here mentioned, if he can show a specific ground of application and that the granting of it is necessary to prevent his suffering injury, or to enable him to perform his duties. But he must state a definite object." Now, a purpose or object may be sufficiently specific, definite and reasonable and cover the interest of the person applying and yet there may be no element in it of an existing controversy, dispute, or discussion. There is nothing in any of the dicta in the judgments in *Rex v. The Merchant Tailors Co.* which would exclude such an object. On the other hand, the observations of the learned judges that "a proper occasion must be made out," "some specific purpose proved" or "some definite object stated in which the party enjoining

inspection is interested," are wide enough to embrace purposes or objects besides those which relate to a pending dispute or discussion.

10. The English authorities, which I have above dealt with, as to the common law right of a member of a Corporation to inspect its books and records have been considered and followed by the Courts in the United States of America. In *In re Sieinway* 45 L.R.A. 461-475 : 159 N.Y. 250.

11. Vaun J., delivering the judgment of the New York Court of Appeals, says :-
-"The right of a corporator, who has an interest, in common with the other corporators, to inspect the books and papers of the Corporation, for a proper purpose and under reasonable circumstances, was recognized by the Courts of King's Bench and Chancery from an early day and enforced by motion or mandamus, but always with caution, so as to prevent abuse," and he cited in support of that proposition *Rex v. Fraternity of Hoslmen* (1796) 2 Stra. 1221, *Gary v. Hopkins* (1795) 7 Mod. Rep. 129 and *The King v. Merchant Tailors' Co.* (1831) 2 B. & Ad. 115. among other English cases. And he concludes as follows :-"We think that, according to the decided weight of authority, a stockholder has the right at common law to inspect the books of his Corporation at a proper time and place and for a proper purpose and that if this right is refused by the officers in charge, a writ of mandamus may issue, in the sound discretion of the Court, with suitable safeguards to protect the interests of all concerned. It should not be issued to aid a blackmailer, nor withheld simply because the interest of the stockholder is small; but the Court should proceed cautiously and discreetly, according to the facts of the particular cause. " In *State of Washington v. Pacific Brewing and Malting Co.* 47 L.U.A. 208, decided by the Washington Supreme Court, Fullerton J. delivering the judgment of the Court said: "The stock holders of a Corporation, have, at common law, for a proper purpose and at seasonable times, a right to inspect any or all books and records of the Corporation. While this right is universally recognized, the Courts disagree as to what is a proper purpose, or, rather, as to what facts are sufficient to warrant the Court in directing by mandamus permission to inspect, where the stockholder has been refused such by the officers of the corporation." And then, citing the English case of *The King v. Merchant Tailors' Co.* (1831) 2 B. & Ad. 115, he proceeds to observe:-"The principle announced in this case has been followed by some of the Courts of this country, in so far at least, as to hold that the mere benefit of knowledge to be derived from the books as to the proper conduct of the business is not a sufficient cause for the issuance of the writ to compel the corporate officer to grant an inspection, but that something more must be shown, as that a controversy is depending, or that some question or interest is involved with reference to which the contents of the books may be applicable....The injustice of the rule, when applied in all its strictness, has been so keenly felt that in England and in many of the United States, the right of inspection of corporate books is now guaranteed to the stockholders by statute and such statutes seem to be generally held not to be innovations on, but declaratory of, the common law. The tendency of the modern decisions, also, is

towards holding that a stock-holder, as such, has a right to inspect the books and other documents of the corporation, where his sole object is to inform himself as to the manner in which the business of the Corporation is being conducted." Accordingly, the Court there held that "'a stockholder of a Corporation has the right, at reasonable times, to inspect and examine the books and records of such Corporation, so long as his purpose is to inform himself as to the manner and fidelity with which the corporate affairs are being conducted and his examination is made in the interests of the Corporation. Nor will it be presumed, when such request is made, that the purpose of the inspection is other than in the interest of the Corporation and when it is charged to be otherwise, the burden should be on the officers refusing such request or the Corporation to establish it." Whether, if the question should arise in this Court, we should follow the "'modern tendency of the decisions" pointed out by Fullerton J. and hold that a stockholder of a Corporation has the common law right of inspection to the extent decided in the Courts of the United States of America, I am not called upon to discuss in the present appeal. The question before us is of a much more limited character. But the two American cases I have cited are valuable as substantially supporting the view I have taken of the principle to be gathered from the English authorities, especially from *The King v. Merchant Tailors Co.* (1831) 2 B. & Ad. 115.

12. In *In re Burton* (1861) 31 L.J.Q.B. 62, the case of *Rex v. The Merchant Tailors' Co.* was referred to by Crompton J. in his judgment as deciding that the right of a member of a Corporation to an inspection of its books and records is not confined to cases where it is ancillary to some proceeding in Court. But he goes on to say:—"I take the result of the cases to be that a mandamus may go against a Corporation at the instance of a member of the corporation to inspect and see whether he can raise a particular case in his favour by examining the books. It must, in my view, be a case with reference to some defined, distinct, dispute as to which it appears that it might be to his advantage to see the minutes of the Corporation ". No doubt these observations would seem to show at first sight that the existence of a specific dispute is in all cases necessary to entitle a member of a Corporation to inspect any of its books calculated to throw light on the merits of that dispute. But Crompton J.'s dictum must be read by the light of what he was called upon to decide in the particular case before him. There a Corporator claimed to have been duly elected to an office in the Corporation and founded his election upon a supposed invariable custom. The Corporation admitted the custom but denied that it was invariable. The corporator, with a view to satisfy himself whether there was or not the supposed invariable custom, claimed the right to inspect certain books of the Corporation bearing on the question. Crompton J. held that the affidavits showed "'the existence of a distinct controversy," and, though he entertained great doubt whether the books would support the custom alleged, he directed a mandamus for inspection to issue as prayed. It was not necessary for the purpose of his decision to consider the larger question, whether the right does not arise where there is no existing controversy but where inspection is claimed merely for a

purpose, specific and defined, in which the member claiming it is interested.

13. The judgment of the Court of Appeal delivered by Lord Lindley (then Lindley L.J.) in *Mutter v. Eastern and Midlands Railway Co.* (1888) 8 Ch D 92 is indeed no direct authority on the point, because that was a case in which a statutory right of inspection was in dispute, but the dictum of the Lord Justice, concurred in by Cotton and Bowen L. J.J., as to the limits of the common law right, is valuable as showing how the learned Judges interpreted the authority of *The King v. Merchant Tailors Company* (1831) 2 B. & Ad. 115. The dictum, upon which Scott J. has relied in his judgment in the present case, is this:—"When the right to inspect and take a copy is not expressly conferred, the extent of such right depends on the interest which the applicant has in what he wants to copy and on what is reasonably necessary for the protection of such interest. The common law right to inspect and take copies of public documents is limited by this principle, as is shown by the judgment in *Rex v. Justices of Staffordshire*; so is the common law right of the member of a corporation to inspect and take copies of the documents of the corporation : *Rex v. Merchant Tailors Co.* (1891) 2 B. & Ad. 115. " In effect, according to this dictum, all that a member of a corporation who seeks inspection of any of its documents, has to make out is that he has an interest in that document and that its inspection is necessary for the protection of that interest. The fact of the existence of a controversy or the pendency of a suit, or the presence of some question in discussion is merely illustrative, not exhaustive of the object necessary to create the right. If there are other objects for which inspection becomes indispensable if they are specific, definite and reasonable and the person claiming inspection as a member of the Corporation has an interest in them, the principle of the authorities which I have so far dealt with seems to me to apply to such objects also.

14. In my opinion. Scott J. has taken a somewhat narrow view of the common law right of a member of a Corporation to inspect any of its books, documents, or records. He thinks that there is no such right unless "such inspection is necessary with reference to some specific dispute or question depending in which the parties applying are interested." The judgment in *Hex v. The Merchant Tailors' Co.*, which is generally cited as a leading case on the subject, does not warrant that view. According to it, all that is necessary is that there must be a proper occasion made out, some definite object proved, in which the party applying is interested. In that case, the party will be allowed inspection of only such book, document, or record, of the Corporation as is required for that particular occasion or object. In the language of the learned editors of *Taylor on Evidence* (Vol. II, edition of 1906 p. 1083 para 1495) "the privilege of inspection is confined to cases where the member of the 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."

15. That being the principle, we have to consider whether the appellant's claim to be allowed to inspect the register of shareholders of the Bank is such as to fall

within it. The object specified by him in his plaint is that ""having observed irregularities in the management of the said Bank in the election of its Directors, in the advancing of "age puma of money to its Directors and in other matters relating to the said Bank," he desires inspection of "the register of the present shareholders so as to enable him to communicate with the other shareholders, and, if possible, obtain their assent to certain proposed resolutions (1891) 2 b. & Ad. 115 for the better management of the affairs of the said Bank and for the removal of some of the existing Directors which he intends to bring before a general meeting of the shareholders." It may be that if the appellant had sought inspection of some other book or books or records of the Company with a view to find out whether there were irregularities in the management of the Bank, his object would have been of a purely speculative character and he would have been out of Court upon the ground that he was seeking to fish out information without any definite and reasonable purpose. But substantially the object set forth in the plaint is that he desires to know who the share-holders are for the purpose of communicating with them and obtaining, if possible, their assent to certain changes which he thinks ought to be introduced for the better management of the affairs of the Bank. That object is, so far as it goes, specific and definite. Though the appellant does not belong to the class of share-holders entitled, under the provisions of Act XI of 1876, to vote at any of the meetings of the proprietors and share-holders of the Bank, yet he has the right under the Act to attend and speak at those meetings. u/s 50, " any ten or more proprietors or shareholders holding stock or shares, or both to the aggregate amount of fifty-thousand rupees," are entitled to " convene a special meeting upon giving 15 days" previous notice of such meeting and of the purpose for which the same is convened." The appellant can be one of such shareholders. If the appellant thinks that a special meeting ought to be called for the purpose of passing some resolution, which, in his opinion, would conduce to the better administration of the Bank, he cannot do it unless he knows who the proprietors or shareholders are, holding stock or shares, or both, so as to communicate with them and take the steps required by the provisions of Section 50. There is nothing vague or shadowy about the specific purpose which he has in view so far. It is immaterial for that purpose that he has no definite scheme as to what he considers to be " the better management of the affairs of the Bank." He may be able to devise a definite scheme after consultation with other share-holders. In the evidence he gave before Scott J. he stated that his object was to get nine instead of only seven Directors elected, nine being the full number permitted by the Act. That is a legitimate object-as specific and definite as any object can be; he cannot attain it unless he is able to get the co-operation of other share-holders; and, before he can secure their co-operation, he must know who the were. And that he can know only by inspecting the register.

16. It is but reasonable that a share holder of such a concern should desire from time to time to consult other share holders and discuss with them the affairs of the bank for the purpose of taking concerted action, where and when necessary

apart from any question of any irregularity existing in the management of the Bank. And for that purpose inspection of the register of share holders is necessary to enable him to find out who the share holders are whom it would be worth his while to consult and whose co-operation he should seek. Other books and records of the Bank may stand upon a different footing: where inspection of any of them is claimed other and stricter considerations might apply. But why should it be necessary for a share holder to prove more than his desire to communicate with other share holders in the event of necessity, where he asks to be allowed to inspect nothing else than the register containing their names, addresses and c. It is to his interest as it is to theirs that they should consult and be in touch with one another affecting the affairs of the bank. The bank cannot lose by such consultation holders unless the inspection is sought for some fraudulent purpose or some purpose prejudicial to the bank.

17. It is not suggested by the bank that any harm would be done, or prejudice to their interests or the interests of any share holders cause, if the appellant were allowed to inspect the register. On the other hand Scott J. finds that the in convince of allowing inspection and copying of the share register or of furnishing a copy thereon is not serious" and that "the court would as a matter of course order it". But he rejects the claim because there is no specific dispute or question in which the appellant is bona fide interested. But it the correct principle of the common law right of inspection of a corporator is as I have enunciated it, the object of the appellant as set forth in his plaint and stated in his deposition is sufficient to fall within the principle. There was no doubt the suggestion made before Scott J. that the appellant's object was not honest but that he claimed inspection merely to cause annoyance to the Bank officials and particularly to Ahmedbhoy hubibbhoy who is one of the Directors. And Scott J. has held the suggestion proved by the cross-examination of the appellant. But the evidence as to it is so meagre that I do not think it can be treated as more than mere suggestion or suspicion. And even if it be that the appellant has some indirect motive of the kind suggested, if, cannot affect his legal right if he makes out that right independently of the motive. *Ponder v. Lushington* (1877) 6 Ch. D. 70. And, in my opinion, he has made out his right.

18. The next question which has to be considered is, whether the principle limiting the nature of the right claimed by the appellant being as above stated, it was incumbent on him to state to the Bank authorities the specific purpose for which he claimed inspection before he could have a cause of action entitling him to sue on refusal by them. The decisions, cited at the Bar on this point, are all on the question of a statutory right of inspection. I have not been able to discover any case where it was held that, as regards the common law right of inspection claimed by a member of a Corporation, he must state to the Corporation his specific purpose or else he would not be entitled to sue the corporate body in case of refusal. But, I think, by analogy the rule as to the statutory right ought to apply to the common law right as well. In *Queen v. The Directors of the London*

and *St. Katharine Docks Co.* (1874) 44 L.J.Q. 13. 4. the statute gave in express terms the right of inspection but it did not provide that a party seeking inspection should state to the company the purpose for which he required it. But it was held that as the right was conferred by the statute not for mere idle curiosity, he must state what his object was and what the scope of his demand was so that the company might see that the demand was reasonable. So also in *The King v. Wilts and Berks Canal Co.* (1835) 3 Ad. & E. 477.

19. In the present case, by his letter of the 5th of July 1906, addressed to the respondent Bank, the appellant disclosed his purpose to be that as there were several irregularities in the management of the Bank, in the election of the Directors, in the manner the Directors acted and other matters, he desired to communicate with the shareholders and take concerted action. Whether he was right or not in complaining vaguely that there were irregularities, he stated his purpose to be that he wished to communicate with the shareholders and take concerted action ; and he asked to be allowed inspection of their register. What was there unreasonable in that request? Why was he to point out what the irregularities were ? He had stated in his demand his immediate purpose-his desire to communicate with other shareholders with reference to the affairs of the Bank and that was sufficient, under the circumstances, so far as the book of which he claimed inspection was concerned. I think that there was here a sufficient statement to the Bank officials of the object or purpose for which inspection of the register of shareholders of the Bank was required by the appellant; and that there was an improper refusal on their part.

20. It was contended before us by Mr. Kirkpatrick. the learned counsel for the respondent Bank, that the appellant had misconceived his remedy in suing for a declaration of his right and an injunction to enforce it, inasmuch as his proper remedy was to move this Court to issue a mandamus u/s 45 of the Specific Relief Act. But by Clause (d) of that section, the remedy there provided for can be invoked only where "the applicant has no other specific and adequate legal remedy." Section 42 of the same Act does provide in cases of the present character for a suit for a declaration and consequential relief by way of injunction.

21. In *Cincinnati Volksblatt Co. v. Hoffriester* 62 Ohio St. 189 a similar contention, viz. that a mandamus and not an injunction was the proper remedy, was raised but overruled by the Ohio Supreme Court. Spear J. disposed of it as follows :-"The complaint of the plaintiff is that he is unlawfully prevented from the enjoyment of a right which is incident to his ownership of stock and his remedy is that the corporation be compelled to desist from such deprivation. This does not call for the performance of an act which the law specifically enjoins. It is, on the other hand, an act which may be compelled by injunction in the common and ordinary exercise of that power. There is, therefore, a plain and adequate remedy open to him in the ordinary course of the law." That is exactly the case here.

22. For these reasons I am of opinion that the decree appealed from should be

reversed and the claim of the appellant allowed with costs both of the suit and this appeal.