
(1977) 11 MAD CK 0008
In the Madras High Court
Case No : Company Petition No. 8 of 1976

S.R. Subramaniam

APPELLANT

Vs

Drivers and Conductors Bus Service Private Ltd.

RESPONDENT

Date of Decision : 17-11-1977

Acts Referred:

Companies Act, 1956 — Section 165(1), 165(2), 397, 398, 433

Citation : (1978) 48 CompCas 672

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Judgement

Ramaprasada Rao, J.—The petitioner is a director of the respondent-company known as Drivers and Conductors Bus Service Private Ltd.,

which is having its registered office at No. 156, Brough Road, Erode, Coimbatore District. The complaint of the petitioner as it appears from the

petition can be summarised thus :

(a) Since the incorporation of the company, the company has not declared any dividend. The petitioner did not receive any dividend nor did he

derive any other benefits in the company as a director, whereas it is said that the other two directors, one of whom has been designated as the

managing director, have been unauthorisedly using the company's fund for their personal benefit.

(b) The petitioner had been kept in darkness relating to the affairs of the company by the other two directors.

(c) The other directors have withdrawn large sums of money in collusion with the financier, Sri Senniappa Gounder, Erode.

(d) Though a notice of a general meeting was called for on January 27, 1966, to discuss the domestic matters relating to the administration of the

company, the meeting was not held at the appointed day and hour and the doors had been locked outside.

(e) No accounts have been properly maintained nor the meetings properly held and the balance-sheets have not been filed with the Registrar of

Companies, after the year ending December 31, 1967.

(f) The other two directors are guilty of misappropriation of the funds of the company.

(g) The company does not practically carry out any business due to the several reasons set out above and due to the financial difficulties with which

the company is confronted.

2. The usual formal counter-affidavit was filed by the Assistant Registrar of Companies, Madras, who would say that the company did not file any

return after filing the annual return made up to August 12, 1968, and balance-sheet as on December 31, 1967. One of the managing directors

countered the allegations by denying them. He would say that it is totally false to say that he along with the other director has been mismanaging the

affairs of the company or withdrawing unspecified amounts to benefit himself. On the other hand, he would allege that the petitioner himself

executed promissory notes in connection with the borrowings of the company in favour of creditors and excepting for such disclosed debts, there

are no other commitments for the company as such. He would deny that the outer door of the company premises was locked on the day when the

annual meeting was set. But, on the other hand, he would state that the petitioner did not attend the meeting but left the meeting all of a sudden and

did not sign the minutes book. He would say that the accounts had been properly maintained and there is no justifiable ground either u/s 433(b) or

(f) of the Companies Act for winding up a running concern.

3. This petition is also opposed by a creditor of the respondent-company. He would allege that he was not quite aware, of the truth or otherwise of

the allegations made. But he would deny the allegations that the two buses belonging to the company have been handed over to him and that he is

running the same in his own right. He would categorically allege that he was not and never was in possession of the buses belonging to the

company and did not receive any daily collections as alleged. He would oppose the application for winding up stating that it would not be in the

interest of the creditors and shareholders to do so and that such an allegation is obviously misconceived and not based on acceptable material. He

would add that the institution of the company petition is apparently due to the differences between the petitioner on the one hand and the other

directors on the other. He would invite the attention of the court to the fact that the company being a private company, there is no obligation on the

part of the respondent-company to deliver the statutory report contemplated in Section 433(b) of the Companies Act. He would conclude by

saying that the allegations in the petition did not warrant the winding up of the company.

4. In the course of the hearing of this petition an order was made by V. Ramaswami J., on April 22, 1977, wherein he directed the buses belonging

to the company to be handed over to the official receiver, Erode, who was authorised to run the same under the permits held by the company

which enabled them to use them as motor vehicles under the Motor Vehicles Act. The official receiver has since filed a report on being called upon

to do so. Mr. T. Raghavan, the learned counsel appearing for one of the creditors, Mr. C. Chenniappan, would add that he assisted the official

receiver by advancing further monies, so that the buses belonging to the company could be run for the benefit of the creditors and that even this

gesture on his part would not achieve the real objective with which the finances were advanced. But, on the other hand, the buses are now off the

road and according to the official receiver substantial amounts are now required for the purpose of putting the vehicles on the road. It is in the

above perspective that this application is set for hearing. No oral evidence has been let in. It is not in dispute that the company is a private

company. Section 165 of the Companies Act, dealing with the meeting and proceedings, refers to the statutory report of a company. The statutory

report is one which is prepared by the board of directors, at least twenty-one days before the day on which the actual statutory meeting is held and

forwarded, which is named as the statutory report u/s 165(2), to every member of the company. Section 165(1), however, provides that this

section shall not apply to a private company. The sheet-anchor of the complaint of the petitioner who has come to this court for winding up the

respondent-company is that the company did not serve on him the statutory report and for such a default the company may be wound up u/s

433(b). Section 433(b) provides that a company may be wound up by the court if default is made in delivering the statutory report to the Registrar,

etc. Once it is clear that this mandate prescribed in Section 433(b) applies to a public company and not to a private company which is excluded

from the teeth thereof as provided for u/s 165(1) of the Act, then the ground on which the winding up is sought by the petitioner before me, viz.,

that a default was made by the company in delivering the statutory report to the Registrar or to the petitioner, as the case may be, is not available

to him for provoking this court to exercise the discretionary jurisdiction to wind up a running concern.

5. The other allegations enumerated by him are matters which relate to the affairs of the company and borders on what is ordinarily known in the

company law as acts of oppression and mismanagement or malfeasance. Specific provision is made in Chapter VI of the Companies Act which

empowers the court, on a complaint made by any person competent to lay such a complaint and in accordance with the provisions of Section 397

or 398, to give relief and consequential remedy to such person. If we analyse the grievances of the petitioner, we find that they come under the

caption of complaints against a company relating to mismanagement or acts of directors which give the reasonable impression that they are

oppressing the minority ". Special excludes the general is an elementary principle of law. When the company law in its wisdom has provided for a

relief to an aggrieved party against perpetration of an oppression and mismanagement of the affairs of the company which is prejudicial to the

interests of the company and if specific provisions are there in the Act itself which would enable a litigant to obtain a relief therefore under sections

397 and 398 of the Act, then the general provision which is reflected in Section 433(f) of the Act, which is residuary in scope and general in tone,

cannot be invoked for the purpose of winding up a private company. Apart from the fact that a private company which has a garb of a statutory

sanction of incorporation, yet the invidious act in such a domestic organisation has to be set right in a manner specifically provided for by the

company court dealing with such private companies and it ought not to be a sole ground for winding up of a running concern for the purpose of

vindication of certain personal vendetta of one shareholder against another. . Section 543 of the Act is another specific provision which can be

availed of if he can establish the acts complained of. I am of the view that it is neither just nor equitable that the company should be wound up. The allegations made by the creditor of the company who opposed this application, taken in conjunction with the specific denials made by the managing director and the other directors of the company, do not give the impression that this private company should be erased from the file of incorporation and be wound up in order to satisfy the pleasure of the petitioner. It is open to the petitioner to take such steps as are available to him under the Companies Act in order to obtain a relief and set at naught such acts of alleged indiscretion and mismanagement on the part of the majority shareholders or other directors. But that by itself cannot be a ground to wind up a private company u/s 433(f) of the Act. Learned counsel for the petitioner would say that the disclosures in the affidavit would warrant the exercise of the equitable power of this court. I am unable to agree. Equity would certainly be done provided the person who seeks for it has done equity. There is no proof except a bare allegation of the petitioner in the petition wherein he brought out some complaints against the other shareholders. It would be hazardous to accept the same without further elucidation and proof, which has not been given by the petitioner in this petition.

6. I have already seen that no case has been made out to warrant an order to wind up u/s 433(b) of the Act. Even otherwise, I am not of the opinion that it is just and equitable that the company should be wound up. The Company Petition No. 8/76 is, therefore, dismissed. In consequence the official receiver, who is in charge of the vehicles, shall within a reasonable time deliver Over the assets in his charge to the company in the usual manner and report such handing over of such assets, to this court. But there will be no order as to costs.