

(1986) 05 DEL CK 0045

In the Delhi High Court

Swadeshi Polytex Limited, In Re: Virender Kumar Goel

APPELLANT

Vs

Raghu Raj

RESPONDENT

Date of Decision : 08-05-1986

Acts Referred:

Citation : (1986) 05 DEL CK 0045

Hon'ble Judges : M.K. Chawla, J

Bench : Single Bench

Judgement

M.K. Chawla, J.—The registered office of Swadeshi Polytex Ltd., hereinafter to be referred as "the defendant company", is situated at New Kavi Nagar, Ghaziabad (U. P.). This company is also having its head office and carrying on business from 6th Floor, Samrat Hotel, Chanakya Puri, New Delhi. On January 23, 1986, the secretary of the company issued notices for the holding of 16th annual general meeting on March 15, 1986, at its registered office. Shri Raghu Raj was appointed as the chairman of the annual general meeting of the company. It appears that the shareholders of the company were sharply divided and in order to have the control of the company started collecting proxies from their supports.

2. Some of the disgruntled elements from both sides also filed suits for an injunction from holding the annual general meeting in different courts in India, and obtained stay of giving effect to the resolutions which may be passed in the said meeting or giving effect to them until the disposal of the injunction applications. The matter was ultimately brought to the notice of the Supreme Court in Civil Appeals No. 940-941 of 1986 in Special Leave Petitions (Civil) No. 3634 and 3633 of 1986. On hearing the parties at length, their Lordships of the Supreme Court were pleased to set aside the ad interim injunctions issued by the courts and directed that the meeting or the adjourned meeting of the company shall go on notwithstanding any order, direction or injunction to be passed by any court in India and the resolutions may be given effect subject to any order of any court having jurisdiction that may be passed after considering the resolutions which may be passed in the light of the challenge to the same on merits. This

order was assessed on March 14, 1986. As a result of the above said order, the 16th annual general meeting of the company was held on March 15, 1986. The result of the poll was declared by Shri Raghu Raj, as the chairman of the said annual general meeting. The result was announced by heading over the same to the secretary of the company at Ghaziabad on April 14, 1986. This result was put up on the notice board at the registered office of the company at 10 a.m. on April 5, 1986, and was also notified to the shareholders and was given wide publicity in the newspapers all over India.

3. Shri Virendra Kumar Goel is one of the registered shareholders of 50 equity shares of Rs. 10 each of the company. It appears that he was not satisfied with the result of the poll and immediately moved in the matter by filling the present suit seeking a declaration that the instruments of proxy executed last by the members of the company should prevail over those executed earlier regardless of the date mentioned on the instruments of proxy, and an injunction restraining the defendants from permitting any person declared elected as members of the board of directors of the company to act as directors of the said company. The plaintiff also desired that defendant No. 2 be directed to make an enquiry/ investigation into the execution and/or revocation of the various instruments of proxy lodged with the company in accordance with article 91 of the articles of association of the company. Along with this suit, the plaintiff also filed an application I. A. No. 2269 of 1986 under Order 39, rules 1 and 2, Civil Procedure Code, 1908, seeking ad interim relief during the pendency of his suit. This very application is under under consideration.

4. In order to appreciate the scope of the plaintiff's suit and his application, as few salient features of the controversy have to be kept in mind. As per the avernments, the plaintiff in his capacity as the shareholders of defendant No. 2 company is vitally and substantially interested in its affairs. On March 12, 1986, he served the company with a notice u/s 176(7) of the Companies Act, 1956, expressing his intention to inspect the proxies lodged with it in respect of the annual general meeting. On the same day, the secretary of the company informed the plaintiff that the proxies can be inspected from March 14, 1986, onwards during the office hours. In response to the said offer, the plaintiff carried out the inspection and pointed out various irregularities in the instruments of proxies in his letter dated March 14, 1986. On the very next day, the plaintiff deposited another letter with the chairman alleging that from the perusal of the instruments of proxies, it was apparent that the proxies in favor of one Dr. Raja Ram Jaipuria were all dated March 13, 1986, and on the said proxies dating has been done, not at the time of execution of the form by the member, but by the proxy (holder) at the time of submission of proxy forms with the company, with the object if making those forms by the member submitted to the company. By the same letter the plaintiff requested defendant No. 2 to make an investigation and to ascertain from the shareholders as to which proxy was executed by him last, since the same shareholders had also issued proxies in favor of Shri Mahendra Swarup, failing him Shri K. S. Mehta and failing him Shri Nimesh

Kampani. Till date, his objections have not been investigated by the defendants.

5. It is case of the plaintiff that from a newspapers report appearing in the 1st April issue of the Financial Express, the plaintiff has come to know that the defendants are proposing to declare the results of the poll taken at the said annual general meeting on April 5, 1986. If the results as aforesaid are declared by the defendants without making the investigation, there is every likelihood that illegal, invalid and/or duly revoked instruments of proxies will be taken into consideration, and it would not only be contrary to the wishes of the shareholders of the company but would also be in gross contravention of the provisions of the said Act and/or the article of association of the defendant company. The said result will not represent the true and correct picture and person who are not entitled to be elected as members of the board of directors of the defendant company will stand elected. Immediately on reading the newspaper report, the plaintiff on April 2, 1986, deposited another letter of the same date with the company pointing out that on the inspection of the proxies on March 14, 1986, he had discovered that:

(i) Several proxies received from shareholders all over India for appointing Shri Raja Ram Jaipuria, failing him Shri Sita Ram Singhania and failing him Shri J. Chaudhary which had been deposited at the registered office of the company, were all dated March 13, 1986.

(ii) Several shareholders who had given their proxies to Dr. Raja Ram Jaipuria, failing him Shri Sita Ram Singhania and failing him Shri J. Chaudhary and which were dated March 13, 1986, had also given proxies to Shri Mahendra Swarup failing him Shri K.S. Mehta and filing him Shri Nimesh Kampani. These later proxies were accompanied by revocation letters revoking all proxies, if any, given by them to any others person.

6. It was also pointed out that the proxies which were dated March 13, 1986, could not all have been physically delivered to Dr. Raja Ram Jaipuria/Shri Sita Ram Singhania/Shri J. Chaudhary on the same date before 11.30 a.m. since the shareholders who signed the said proxies reside all over India and/or in remote parts of the country. Furthermore, the mere fact that a later date appears on a proxy form, i.e., March 13, 1986, cannot by itself mean that such proxy would prevail over a proxy bearing an earlier date, for, the one bearing the earlier the earlier date may, in fact, be that last proxy signed by the shareholder concerned. It is not the date which a proxy bears that would determine which proxy would prevail over the other but the actual time and date when such proxies are signed by the shareholders concerned. In this letter, the plaintiff requested that there exist valid, reasonable and bona fide grounds for the chairman and/or the company to investigate into the validity of the said proxies. The defendants have not cared to investigate into the validity of these proxies, nor any orders on his letters/objections have been passed by the chairman, and thus left with no other option, the plaintiff had filed the present suit and the application.

7. Notice of the suit as well as the application was issued to the defendants for April 7, 1986, and in the meantime, the defendants were directed to deposit the proxies in the court by that time. Immediately on the service of the summons of the suit and notice of the application, raising therein a number of preliminary objections, inter alia, alleging that the plaintiff's suit/application is misconceived, incompetent and untenable in view of the order dated March 14, 1986, of the Hon'ble Supreme Court of India; that the alleged cause of action in its entirety, of plaintiff's own showing arose, if at all, at Ghaziabad, outside the limit of the territorial jurisdiction of this court and as much this court has no jurisdiction to entertain and try the present suit, that the matters complained of in the plaint relate to the internal management of the defendant company and this court has no jurisdiction to interfere with the same; that the articles of association of the defendant company contain a complete code, inter alia, for determination of the objections to the validity of acts; that even otherwise the objections contained in the plaintiff's letter were duly taken into consideration by the scrutinisers and the first defendant as chairman of the annual general meeting and its result was duly communicated to the plaintiff.

8. On merits, the defendants took up the stand that the plaintiff is a shareholders, holding 50 equity shares of Rs. 10 each out of 39 lakh equity shares of Rs. 10 each. The plaintiff was allowed the inspection of the proxies as per his wishes but as the inspection of the register of proxies was not asked for, its inspection was not carried out, even though the same was available. The objections of the plaintiff contained in his letters dated March 15, 1986, and April 2, 1986, were duly considered by the scrutinisers and by the first defendant chairman, and were found to be wholly misconceived and untenable in law before the result of the poll was finalised/declared on April 4, 1986, and put up on the notice board at the registered office of the company at 10 a.m. on April, 1986.

9. The plaintiff has made certain vague and general references to the instruments of proxies in his detail and tried to draw inferences which are totally misconceived. The plaintiff, in fact, has no cause of action for the relief claimed in the suit/application and the same are liable to be dismissed.

10. The plaintiff in his rejoinder to the application has denied the allegations/ground taken in the reply by the defendant and has reiterated the facts as stated in the plaint.

11. I have heard learned counsel for the parties and with their help gone through the record carefully.

12. Learned counsel for the plaintiff has laid much stress on the following grounds. Their answer will prima facie determine the fate of the plaintiff's application (I. A. No. 2269 of 1986) :

"1. Whether the proxies bearing the date March 13, 1986, were validly executed by the shareholders and could have been physically delivered to Dr. Raja Ram Jaipuria/Sita Ram Singhania/J. Chaudhary on the same day before 11.30 a.m.

for being deposited at the registered office of the company, if not to what effect?

2. Whether the proxy form bearing the date given by the shareholders, will prevail over the proxy with a later date mentioned by the nominee?

3. Whether the chairman of the annual general meeting considered and disposed of the objections of the plaintiff contained in his letters dated March 15, 1986, and April 2, 1986, if not to what effect? "

13. These questions can easily be disposed of by referring to the pleadings and the various documents on which the parties have placed reliance. However, at the outset, the principles relevant for the grant of the temporary injunctions have to be kept in mind. In order to obtain the interim relief, the plaintiff must show - (i) that he has a prima facie case; (ii) that he is likely to suffer irreparable injury if the injunction is not granted; and (iii) that the balance of convenience lies in his favor.

14. The term "prima facie" has not been defined in any statute and although no attempt has been made to encase this term within the confines of the judicially evolved definition or to involve an inflexible formula for universal applications, the term has been judicially interpreted to mean a case which is not bound to fail on account of any technical defect and needs investigation. It means that the case at first sight or on the face of it is so probable that it needs consideration, investigation without further examining a question or anticipating a final decision. At this stage, the plaintiff is not required to make out a complete legal right but has to satisfy the court that he has a prima facie case to raise and a mere existence of a doubt as to the plaintiff's right does not itself constitute sufficient ground for refusing the injunction. Normally, the court does not pre-judge the case by judicial scrutiny of facts pleaded. The proper stage for it is at the conclusion of the trial when the totality of the circumstances comes before the court. As far as the irreparable injury is concerned, the plaintiff is not required to show that the injury is not physically capable of being remedied, but the inadequacy of remedy by damages for the legal injury would be sufficient to constitute an irreparable injury. As regards the balance of convenience, the plaintiff has to show that the inconvenience resulting to him in the event of withholding of relief of temporary injunction is likely to exceed the inconvenience to the defendant which he would suffer by the grant of injunction.

15. In this background, let us scrutinise the rival contentions of the parties. There is no common law right on the part of a member to vote by proxy, but, by statute, any member of a company entitled to attend and vote at a meeting, including a meeting of any class of members, is entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of him, and a proxy appointed to attend and vote instead of a member of a private company will also have the same right as the member to speak at the meeting. Unless the articles provide to the contrary, however, this provision does not apply to a company not having a share capital, not can a member of a private company

a[[pint more than one proxy to attend on the same occasion. Section 176 of the companies Act is the relevant provision relating to proxies. It lays down that any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of himself; but a proxy so appointed shall not have any right to speak at the meeting.

16. The instrument appointing a proxy shall - (a) be in writing; and (b) be signed by the appointer or his attorney duly authorised in writing or if the appointer is a body incorporate, be under its seal or be signed by an officer or an attorney duly authorised by it. The relationship between a shareholder and his proxy is that of principal and agent. As a rule, a proxy is not revoked unless written notice of the revocation by death, insanity, transfer of shares or act of revocation has been received by the company before the meeting or adjourned meeting. A proxy signed in blank as to the name of the appointee, or as to the date of the meeting and delivered with authority to fill up the blank, is not open to objection if, when deposited with the company, the blank has been duly filled up. It is not a deed and there is, Therefore, no objection to the blank being filled up by the agent of the appointee, even bought appointed by parole. The instruments in such circumstances is not complete until it is filled up, and when filled up, the only question is whether it is duly stamped.

17. It is a normal practice amongst the shareholders of a particular company, who are interested in the elections to the office of the said company, to solicit the support of their relations, friends and admirers. Generally, the shareholders do attend the annual general meeting/other meetings personally. In the case of other persons who are residing at places far away from the registered office of the company or are unable to attend on one ground or the other and are desirous of being represented, they execute proxies in favor of their friends, whether shareholders or not, so that they may have the satisfaction of having participated in the meeting. The interested parties do collect such proxies from such like persons, well in advance of the holding of the meetings. They obtain the blank proxies and deposit the same after filling up the blanks, before the holding of the meeting. There is nothing wrong in this practice not can the plaintiff have any grievance. It is not disputed that the plaintiff was interested and in fact voted for Sh. Mahender Swarup and his nominees. This group had also collect much more proxies for their candidates in a similar fashion. They have utilized those very proxies in the same manner as the defendant's group have exercised their right. The plaintiff now cannot come round and raise any objection to the proxies collected by the defendants. If the defendants have committed any irregularity in collecting the proxies, the same arguments will destroy the case of the plaintiff and his group. There is no necessity for each shareholder to be personally present, at the place of the meeting and sign the proxy forms in blank. To determine the validity of these proxies, appropriate safeguards have already been taken. In view of these circumstances, there is no force in the first contention of the plaintiff.

18. The next issue should not detain the court any further. It is a settled proposition that if there are two or more proxies given by the same shareholder in respect of the same shares, the proxy bearing the latest date will supersede the earlier ones. If the proxies bear no date or bear the same date, both the provision would be ineffective. It is not disputed that the proxies which have been entertained were complete in all respects. The submission of learned counsel for the plaintiff that the date of the signatures of the shareholders on the proxy be considered as the date of the filling of the same in the registered office of the company is not convincing. Once the blank proxy without date has reached the hand of the appointee, it can safely be presumed that an authority was given to him to fill up the blanks with his own name or the name of any other person with date and to use the proxy for the purpose of voting at the meeting. The very object of sending of the proxies by interested persons to their friends and acquaintances is to obtain the friendly votes. If a shareholders signs the proxy in blank, it is his own fault, and he should be careful enough not to do so, Once the proxy has been properly filled up on a particular date by the person to whom it is entrusted, the later date has to be taken as the date of the signing of the proxy by the shareholder, even though another appointee may also be in possession of a blank proxy of the same shareholder, of a prior date. Learned counsel for the plaintiff has neither drawn my attention to any such rule nor has cited any authority in support of this submissions which prima facie has no substance.

19. Furthermore, the grievance in this behalf can only be raised by the person who had executed a blank proxy. There is no complaint from any one of them that their proxies have wrongly been utilized. How and under what circumstances the plaintiff can come forward and champion the cause of other shareholders is not explained. Such an objection, to my mind, cannot be entertained.

20. The last challenge is to the non-exercise of the powers by the chairman under article 91 of the memorandum and articles of associations of the company. It is no doubt true that the plaintiff had written the letters dated March 15, 1986, and April 2, 1986, to the defendant company pointing out the various defects appearing in the proxies and reminding the chairman that there exist valid, reasonable and bona fide grounds for investigation into the validity of the said proxies. The stand of the plaintiff is that these objections were not considered and if considered, he was not afforded a reasonable opportunity of proving the same by leading evidence. His further submission is that the chairman has not applied his mind as per the requirements of article 91 of the memorandum and articles of association of the defendant company.

21. Even this arguments has no substance. The letter of the chairman dated April 4, 1986, to the plaintiff, to my mind, is a complete answer to this arguments. By this letter, the plaintiff was informed that his above-said letters were handed over to the scrutinisers and looking into the matter, he was fully satisfied that all the points raised by the plaintiff have been taken into account. Defendant No. 1 has filed affidavit in support of the reply to the plaintiff's application in which he

has further alleged that the letter dated March 15, 1986, was read over by the answering defendant and was given to the scrutinisers at the time the poll was being conducted. While examining the proxies, the scrutinise considered the said letter and gave their report to the chairman on April 4, 1986, when the chairman considered the letters dated March 15, 1986, and April 2, 1986, and finalised the result after fully satisfying himself as well. By virtue of the provision of article 95, the decision of the chairman shall be deemed to be valid and binding for all purposes. It is not a case of non-applications of mind by the chairman as alleged by the plaintiff. In a case reported as *Wall v. Exchange Investment Corporation Ltd.* [1926] 1 Ch 143, a similar situation arose and was disposed of by Pollock M. R. The relevant portion of his judgment reads as under (at page 145) :

"In my opinion, this appeal must be dismissed. It raises a short but interesting point as to the powers of the chairman under one of the articles of association of the defendant company. [His Lordship stated the facts and the provisions of article 58 and continued :] It has been said on behalf of Mr. Wall in a succinct and good argument that article 58 does not prevent the matter from being reconsidered by the court, and that Mr. Okell was wrong in the decision at which he arrived. It may perhaps be of service to note that the word "deemed" seems to be necessary, because, if the chairman's discretion or powers are not disallow the votes, they are to stand and to be valid for all purposes whatsoever. "

22. In this case, the chairman has come to the conclusion that the objections to the proxies have no substance with the consequence that they are deemed to be valid. This decision of the chairman cannot be set aside because the article makes his decision binding upon the parties who were attending the meeting.

23. The result of the election has since been declared. The new board of directors have taken charge of the office. They are required to fulfill the obligations of the company which may arise in its day to day working. Besides the elected representatives, there are four nominees of the financial institutions who have to play an active part in looking after the interest of the company and its shareholders. There is no allegation that any of the representatives of the financial institutions has a bias against the plaintiff or his group or that they are not likely to watch the financial or other interest of the company. As at present advised, the court will not go behind the wild allegations of the plaintiff of frittering away the property or jeopardising the interest of the shareholders of the defendant company. This apprehension of the plaintiff and his group prima facie has no substance. It is expected that the newly elected board members will do their utmost to conduct the affairs of the company in a legal manner and would safeguard the interest of all concerned.

24. The proxies which have been utilized for the election are in the proper custody of a documents court at Meerut. During the course of the disposal of the present suit, those very proxies will be scrutinized by the court keeping in view the objections of the plaintiff. It is, however, a question of evidence and at this stage no opinion can be expressed. However, for the present, it can safely be

said that the plaintiff has not been able to make out a prima facie case for the grant of the injunctions restraining the newly elected board from exercising their rights and obligations under the memorandum and articles of association of the defendant company. The plaintiff will also not suffer an irreparable injury as all the decisions of the board will be taken by adopting a regular procedure, for which the company is required to maintain the minutes of the meeting. All decisions are to be ratified before any action is taken. On the other hand, if an injunction as prayed for is granted, the business/affairs of the company will come to a stop, which will result in a colossal loss to the company as well as the shareholders. The balance of convenience also lies in favor of the defendants and in allowing them to perform their duties in managing the affairs of the company. No other point has been urged nor requires going into.

25. As a result of the above discussion, I see no force in the application. The same is hereby dismissed. Any observation made in this order will have bearing on the merits of the case.