

(1923) 03 MAD CK 0072
In the Madras High Court

T.R. Venkatarama Aiyar

APPELLANT

Vs

The Coimbatore Mercantile Bank Ltd.

RESPONDENT

Date of Decision : 29-03-1923

Acts Referred:

Companies Act, 1956 — Section 12

Citation : AIR 1924 Mad 126 : (1923) 18 LW 304

Hon'ble Judges : Schwabe, C.J.; Ramesam, J

Bench : Full Bench

Judgement

Schwabe, C.J.—This is an appeal from an order of Phillips, J., on a petition made u/s 12 of the Indian Companies Act, asking the Court to confirm the special resolution of a company, for an alteration in the Memorandum of Association. Clause 7 of the Memorandum is in the following words:

T.R. Venkataramana Iyer has been appointed agent, principal secretary and the director to the Bank and given powers to enter, on the responsibility of this bank, into any agreement or transaction with the registered Banks in the following places and other places and with business and industrial concerns of local traders, with a view to the bank's earning commission or profits.

2. The actual words are in Tamil and the translation given above, I think, adequately represents the meaning.

3. The only power that the Court has to confirm resolutions of a company, in regard to as alteration of the Memorandum of Association, is in respect of matters covered by Section 12; for Section 10 enacts that:

A company shall not alter the conditions contained in its memorandum, except in the cases and in the mode and to the extent for which express provision is made in this Act.

4. Other specific conditions of the memorandum can be altered, in the manner provided for, in other parts the Act. It is not contended that this Clause comes

under any of them. It is contended that it comes u/s 12, as being "with respect to the objects of the company," which may be altered in this way "so far as may be required to enable it to carry on its business more economically or more efficiently, or to restrict or abandon any of the objects specified in the memorandum." In my judgment, this is not an object of the company at all. The object of the Company as stated in Clause 3 of the memorandum, is to carry on banking business and things ancillary thereto, and the appointment of this gentleman, as agent, secretary and director, is a method of carrying out the object of the company but it is not in itself an object at all. If, however, it ought to be regarded as one of the objects of the company, the question would arise whether the Court ought to confirm the resolution of the company putting an end to it. I call attention to this, because the confirmation or otherwise of such a resolution is a matter of discretion, and, in this case it is clear that no discretion has been exercised at all; because the learned Judge says that he "is satisfied that this is an alteration that can be made by the company and therefore ordered the alteration as prayed." He gives no reasons for exercising his discretion in that way, but apparently treats it as a matter which the company has the power to do; it is the duty of the Court to assist the company in so doing and I think it desirable to point out that that is not the intention of the legislature at all. The intention of the legislature is as indeed is clearly stated in Section 14, that the Court should exercise a discretion, having regard to the interest of the various persons, share-holders creditors and others.

5. Now, if this were one of the objects of the company, and the resolution has therefore to be confirmed by the Court and I had to exercise my discretion upon it, without any hesitation, I should refuse and for this reason, that the company has made a contract with this man in the most solemn form that the company can, namely, by putting it into its memorandum, and I can see no justification for a Court, so to speak, to unmake the contract, or to permit the company to unmake the contract, by altering its Memorandum of Association. Nor indeed do I think it would have the least effect because if there is such a contract, the man has his contractual rights and the fact that the company purports to revoke, with the consent of the Court, that contract does not, as between that man and the company, interfere in any way with his rights.

6. But there are other things that can be put into a Memorandum of Association than the objects and the matters set out in the Companies Act, such as name, capital, address etc. They have been described as conditions. A very common one is a provision for the rights inter of preferential and ordinary share-holders. It has been held that in respect of such conditions no power is given in the English Companies Act, which corresponds completely with the Indian Companies Act on this point, to alter the conditions in the memorandum. Such a condition is unalterable either by the company or by the Court, at all. See *Ashbury v. Watson* [1885] 30 Ch. D. 376 followed and approved in *In re Welsbach Incandescent Gas Light Co. Ltd.* [1904] 1 Ch. D. 87.

7. It is, however, argued that this is not a condition but is something else. It was suggested in *Aahbury v. Watson* [1885] 30 Ch. D. 376 by Lord Justice Fry that there might be some details of management of a company, contained in the memorandum, which would be alterable not being conditions. No case of this kind has ever arisen, and I am quite satisfied that the Clause is not a detail of management at all. Condition for this purpose is also described as stipulation and in my judgment, this is one. It is a very important provision. It is not necessary to discuss now the duration of that agreement. That may be a matter for discussion elsewhere, but at any rate, for the time there was a man set up with, and he agreed himself to have, almost unlimited powers of control in the affairs of this company; and share-holders, who took their shares in the face of the memorandum, would know that they were to have the advantage of that man's efforts. It may indeed have been one of the important reasons guiding people to become share-holders in the company. I think it is a condition, within the meaning of Section 10, and is therefore unalterable. If it were not a condition and it is not one of the objects--it is at the least a statement of fact, solemnly made in the memorandum, namely that this man has undertaken this business and is given these powers, and how a Court can be asked to delete from a memorandum, or how the company by its resolution can delete a statement of fact like this, I do not see. I find no provision in the Company's Act permitting it and I see no ground on which the resolution of the company so doing could be sustained.

8. It follows, in my judgment, that this petition must fail and ought to have been dismissed. I think it is desirable to say that nothing that we are saying will affect the rights under the contract as between Mr. Venkatarama Aiyar and the company. Whether in fact he has resigned, in a binding fashion, as is alleged by the company, whether he has been guilty of misconduct as is alleged by the company, whether the company have broken their contract by dismissing him or refusing to employ him further, are questions which can be determined in the ordinary course of law: and it does not assist any one to arrive at a resolution of those questions to apply to the Court in this way, or for the company to pass special resolutions, as they purport to have done in this case. These matters are entirely open and remain for decision in any suit that has been instituted or may be instituted between the parties.

9. This appeal must be allowed with costs on the higher scale.

Ramesam, J.

10. I agree.