**Bharat Kumar Dilwali Vs. Bharat Carbon and Ribbon Mft. Ltd.**

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**Court** : Delhi

**Decided On :** Dec-09-1971

**Reported in** : ILR1972Delhi837

**Judge** : P.N. Khanna and; Prakash Narain, JJ.

**Acts** : Companies Act, 1956 - Sections 171

**Appeal No.** : Suit Appeal No. 306 of 1971

**Appellant** : Bharat Kumar Dilwali

**Respondent** : Bharat Carbon and Ribbon Mft. Ltd.

**Advocate for Pet/Ap.** : Ved Vyas,; D.K. Kapur,; S.N. Chopra and;

**Judgement** :

P.N. Khanna, J.

(1) The only question that has come up for consideration before the Division Bench is : whether the day on which the notice of the general meeting of the company is served and the day on which the meeting is held are to be excluded, when calculating 21 days, the period of notice, prescribed under section 171 of the Companies Act, 1956, herein referred to as 'the 1956 Act'. Section 171(1) of the 1956 Act reads as. follows :-

'171(1).-A general meeting of the company may be called by giving not less than 21 days notice in writing.'

(2) Mr. S. N. Chopra, the learned counsel for the defendant, contended that the phrase 'not less than 21 days notice' has to be construed with reference to section 53(2) of the 1956 Act, which prescribes the time when the service of the notice of a meeting shall be deemed to have been effected. The relevant portion of section 53(2) of the Act reads as follows:

'53(2).-WHEREa document is sent by post,- (a) service thereof shall be deemed to be effected by properly addressing, pre-paying and posting a letter containing the document.....; and (b) such service shall be deemed to have been effected- (i) in the case of a notice of a meeting, at the expiration of forty-eight hours after the letter containing the same is posted, and (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.'

(3) According to Mr. Chopra, 21 days of the notice, required under section 171, start

running when the service of the notice of the meeting is effected. Under the Indian Companies Act, 1913, herein called 'the 1913 Act', the service was deemed to be effected, according to Regulation 112(2) of Table A in the First Schedule to the said Act, at the time at which the letter would be delivered in the ordinary course of post. Section 53 of the new 1956 Act, has introduced a change, which according to him, lays emphasis on the exact hour at and not only the day on, which the service is deemed to be effected. This emphasis on the hour, Mr. Chopra urged, was to fix the point of time from which the twenty one days of the notice are to run. Each day of the notice is to be taken as a unit of twenty four hours, starting from the expiry of the forty eighth hour after the time it was posted. And the meeting held on the expiry of the last hour of such a twenty-first day of twentyfour hours, was a validly held meeting. Neither the day on which the notice is deemed to be served, nor the day on which the meeting is to be held, submitted Mr. Chopra would, thereforee, be excluded. In support of his argument, Mr. Chopra relied on an English decision of the Court of Appeal in Comfoot v. Royal Exchange Assurance Corporation 1904 (1) Kb40. That was a case on a policy of marin insurance on a ship. The insurance was expressed to be upon the ship 'at and from Portland, Oregon, by any route to Aloga Bay and for 30 days in port after arrival, however, employed.' The expression '30 days' in the policy was held to mean thirty consecutive periods of 24 hours, the first of which began to run at 11.30 a.m. on August 2, when the ship came into Bay and anchored. The insurance was held to have come to an end before the loss occurred at 4.30 p.m. on September 1.

(4) The contention of Mr. Chopra cannot be accepted. His reference to the words 'forty-eight hours' after the notice is posted, occurring in section 53 of the 1956 Act, as if indicating an emphasis on the word 'hour', has no justification. In the corresponding provision in the 1913 Act, the word employed was 'time', at which the notice would be deemed to be delivered in the ordinary course of post. The use of the word 'hour' in the new 1956 Act, does not, thereforee, introduce a change of any significance- 'The ordinary course of post', in a- vast country like ours, with many far flung and at places inaccessible distances, where the time taken for delivery of letters varied from place to place, introduce an element of uncertainty. In order to do away with this state of affairs and to import certainty to such an important matter, as the length of notice of general meetings of companies, legal fiction was pressed into service, by enacting in the 1956 Act, that the notice is deemed to be served forty-eight hours alter posting. The with this state of affairs and to import certainty to such an important and to fix the day of service as the day on which the said forty-eight hours expire.

(5) The judgment of the Court of Appeal, in Comfoot v. Royal Exchange Assurance Corporation, renders no help to Mr. Chopra. The wordings in the policy, under consideration in that case, clearly indicated that the risk was covered for 30 days. after arrival of the ship (and not 30 days after the day of arrival). The risk could not be said to commence on the next day after the day on which the ship arrived because the period of time from 11.30 a.m. on August 2, when the ship arrived, up to the beginning of August 3, could not be said to be uncovered. The risk was continuing during the voyage and continued after arrival. The said case, thereforee, is of no help- to Mr. Chopra's argument

(6) The language used in section 171 of the 1956 Act is entirely different. It does not speak of 21 days after the service is effected. On the other hand, it requires the giving of not less than 21 days notice. The expression 'not less than 21 days notice'

used in section 171 normally implies a notice of 21 whole or clear days. Part of the day, after the hour at which the notice is deemed to have been served, cannot be combined with the part of the day before the time of the meeting on the day of the meeting, to form one day. Each of the 21 days must be a full or a calendar day, so that the notice can be said to be 'not less than 21 days notice.'

(7) The words 'not being less than one month', occurring, in the proviso to section 78 of the Travancore District Municipalities Act, came up for consideratson before the Supreme Court in Pioneer Motors (P) Limited v. Municipal Council, Nagarcoil, : [1961]3SCR609 . The Supreme Court held that the said words implied that clear one month's notice was necessary to be given, that is both the first day and the last day of the month had to be excluded. The Supreme Court noticed with approval the observation of Lord Parker, C.J., in Thompson v. Stimpson 1960 (3) All E.R. 500, in which case, no notice to quit any premises was valid under the statute unless it was given 'not less than four weeks' before the date on which it was to take effect. It was held that the length of notice required was four clear weeks, i.e. a period of four weeks .excluding the day from which it ran and the day on which the notice expired. The reasoning on which the judgment was based was that the person for whose benefit the delay was prescribed must be given the benefit of the entire period.

(8) Mr. Ved Vyas, the learned counsel for the plaintiff cited several decisions, both English and Indian to support his contention that the words 'not less than' so many days have always been interpreted to mean the whole days. It is not really necessary to go into these authorities in view of the judgment of the Supreme Court in Pioneer Motor's case (supra) , which is binding on us. But in order to notice the consistency in the interpretation of the aforesaid relevant words in a long catena of decisions, we may here refer to them in brief.

(9) In Chambers v. Smith, 67 Revised Reports 231, every writ was to be made returnable on some day 'not being less than 15 days' after the service thereof. It was held that the date of the issue of the writ as well as that of the service thereof were to be excluded providing an interval of clear 15 days. In re Railway Sleepers Supply Company 1885 (29) Ch. . 204 an interval of 'not less than fourteen days'. which under section 51 of the (English) Companies Act, 1862 was required to elapse between the meetings passing and confirming a special resolution of a company was held to mean an interval of 14 days, exclusive of the respective days of the meeting. Chitty J. cited in that case, with approval Lord Tenterden's test in Webb v. Fairmaner, (3 M&W; 473, 477(a) and Young v. Higgon, (5 M&W; 48, 54), which was to reduce the time to one day. Using the words of the learned Judge, supposing the statute in our case had said a notice of 'not less than one day'; if the notice was served, say on the 1st of January, the meeting could not properly be held on the 2nd of January, for one day must intervene, thereforee, the 3rd of January would be the earliest day and adding twenty more days to make up the twenty one, the meeting could not be held before the 23rd. Chitty, J. had also observed that the general rule of law in the computation of time was that fractions of a day were not reckoned, in other words, to render the day of sort of indivisible point. In Mcqueen v. Jackson, 1903 (2) K.B. 163, less time than fourteen days from the day on which the summons were not be made returnable, was held to mean that 14 clear days must elapse between the date of service and that of return. In re Hector Whaling Ltd., (1935) All E.R. Rep. 302, (1936 Ch. 208), the words 'not less than 21 day's notice', in section 117(2) of the English Companies Act, 1929 were construed to mean, not less than twenty one clear days, exclusive of the day of service of the notice and exclusive of the day on which the meeting is held.

(10) Taking up the Indian case law, the expression 'not less than 30 days', in section 22(2) of the Income-tax Act. 1922, was interpreted in Commissioner of Income-tax v. Ekbal and Co., Air 1945 Bom 316, to mean outside two points of time, one at which the period begins and the other at which it expires. This. meant 30 clear days and was to be distinguished from the expression within 30 days, which was within two points of time- In N. V. R. Nagappa CheUiar and another v. The Madras Race Club : AIR1951Mad831a , the words 'not less than 21 days' in section 811 of the 1913 Act were held to mean an interval of 21 clear days in computing which the date of the meeting and the date of the service of the notice were to he excluded. In Anokhmal Bhurelal v. Chief Panchayat Officer, Rajasthan Jaipur and others , the expression 'at least seaven days before the date of election' were construed to mean seven clear days. In Smt. Harddevi v. State of Andhra and another : AIR1957AP229 , the words 'not being earlier than three days' from the date of the service of the order in section 6(c) of the Requisition of Buildings (Andhra Area) Ordinance, 1953 were interpreted to mean that three whole days must elapse between the date of the service of the order and the date fixed for delivering possession. Three periods of 24 hours calculated from the hour of the day on which the order was served, were held to be not sufficient compliance with the terms of the relevant provision. In 7'. M. Lall v. Gopal Singh and other , Rule 4 of 'the All India Bar Council (First Constitution) Rules, 1961 came up for consideration. The words in the said rule, relevant for our present purpose, were 'not less than (jays' and 'not more than 21 days' before the date of the election. These words, it was held, referred to clear, complete or entire days, intervening between the two terminal days. It was observed: 'it is not correct to take into account in computing days, fraction of a day. A day is a unit of time and has been treated as a standard of measurement. A day is not an aggregation of hours, minutes or seconds when it is construed as a unit of time. When Law refers to days, it does not take into reckoning a further sub-division of a day in hours or minutes. By a day is understood a 'calender day' or an other day. A 'day' is a space of time between two successive midnights and in computing day as a period oft ime, law does not take into consideration fractions of two days in order to make up one complete day.'

(11) The contention of Mr. Chopra, that a change has been introduced in the law relating to length of notice, is not correct. We, on the other hand, find that the legislature has avoided a change. Under section 81(2) of the 1913 Act, a general meeting for passing special resolution. could be called by a notice of 'not less than 21 days'. Regulation 49 of Table A in the First Schedule to the 1913 Act, however, provided that,, subject to the said provisions of sub-section (2) of section 81 of the 1913 Act, relating to special resolutions, 'fourteen days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given)', specifying the place, the day and the hour of meeting could be given. The legislature was, thus, well aware of the previous provisions as well as the interpretation thereof. While enacting the Companies Act, 1956, the provisions contained in Regulation 49 about the inclusion or the exclusion of any particular day were completely done away with. The language about the notice of 'not less than 21 days', which the courts had been interpreting to mean full complete days, used in section 81(2), was retained in the new section 171 of the 1956 Act, without incorporating the further explanatory words 'inclusive' or 'exclusive' of any particular days. The adoption of this language in section 171 is significant and shows the intention of the legislature to exclude the day on which the service was deemed to be effected and the day of the meeting. Reference to section 53(2), while interpreting section 171, as urged by Mr. Chopra, has, thereforee, no justification. Length of notice of general meeting of companies is an important subject and the Courts have

been interpreting the relevant words in the' provisions dealing with it, with a remarkable unanimity. And, now when, as we have held above, the 1956 Act has not introduced any change, we would better adhere to the settled rules, which we must say with respect, have been properly settled.

(12) The question posed accordingly must be answered in the affirmative. The day of service of the notice of the general meeting and the day of the meeting have to be excluded, while counting twenty-one days, the period of notice prescribed under Section 171 of the 1956 Act.

(13) Costs shall abide the event.