V. Selvaraj Vs. Mylapore Hindu Permanent Fund Ltd. and ors.

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Court : Chennai

Decided On : Jul-21-1967

Reported in : AIR1968Mad378

Judge : Ramaprasada Rao, J.

Acts : Indian Companies Act, 1956 - Sections 166, 186 and 256

Appeal No. : Company Appln. Nos. 124 and 131 of 1967

Appellant : V. Selvaraj

Respondent : Mylapore Hindu Permanent Fund Ltd. and ors.

Judgement :

ORDER

(1) The above two applications were taken up together for hearing, as common questions are involved. Company Applications No. 124 of 1967 is by a shareholder of the Mylapore Hindu Permanent Fund Limited, which is governed by the provisions of the Indian Companies Act, 1956, for a direction restraining respondents 2 to 5 from exercising the functions of directors of the above fund which is a public limited company, and for certain incidental orders. The 1st respondent in the said application, is the Fund itself. The applicant alleges that respondents 2 to 5 have to retire on the holding of the 94th annual general body meeting of the Fund, their term of office having expired by efflux of time and they being obliged to retire by rotation. The 94th annual general body meeting was called by the Board of Directors who were in charge of the affairs of the Fund and who were statutorily obliged to call for such a meeting. Such annual general body meeting was proposed to be convened at 2 p.m. on 22-4-1967 at the Gokhale Hall, No. 9, Armenian Street, Madras-1. The contention of the applicant is that after calling for the said meeting, the Board of Directors, including respondents 2 to 5 left the hall abruptly along with the Secy. of the Fund after distributing the agenda and the printed balance sheet for the financial year ending with 31-10-1966. As the Board of Directors and the Secretary left without sufficient cause, the meeting hall, the shareholders who were present there continued the meeting and considered the agenda after electing Mr. S.T. Shanmugesan as the Chairman thereto. Several resolutions were passed in the said meeting, including the election of Directors in the place of respondents were passed in the said meeting, including the election of Directors in the place of respondents 2 to 5 who ought to have retired normally if the meeting was held. The applicant, therefore, states that respondents 2 to 5 can no longer hold their office and, in fact, they have ceased to hold such office and, in fact, they have ceased to hold such office on 22-4-1967 after the annual meeting was held by those who were left over at the hall after the Board of

Directors and the Secretary left the same. He, therefore prays that suitable directions restraining respondents 2 to 5 from continuing as Directors of the Fund may be given.

The first respondent has filed a counter-affidavit through its Secretary. According to the first respondent, this application is not maintainable in law and the facts stated in the affidavit in support of the application to not represent the correct state of affairs. The Secretary of the Fund states that in spite of the best arrangements made by the Board of Directors by providing separate entrances for the entry of members and non-members proxy-holders, yet the persons who congregated at the Hall, including strangers, gained entrance into the Hall improperly and insisted upon their demands being conceded, and refused to vacate the Hall. Even the police help which was sought to maintain peace and order was of no avail. By that time it was 2 p.m. and members and non-members who gathered outside the Hall gained entry by pushing the main door and there was thus confusion and pandemonium and shouts and counter-shouts. As it became impossible for the Board of Directors to commence and conduct the annual general meeting called, for, the President of the Fund recorded in the minutes-book that the annual general meeting could not be held and an announcement to that effect was also made in the mike at about 3 p.m. It is also alleged that the minutes-book and the record were never taken away before the commencement of the meeting and all such records were there in the Hall till about 5 p.m. By reason of the fact that the meeting could not be commenced and thereafter held, the Fund requested the Registrar of Companies for extension of time for holding the 94th annual general body meeting of the Fund. The Fund also refers to certain civil proceedings taken by the petitioner and others, which it is unnecessary for this Court to set forth in detail. The Fund alleges that no annual meeting of the Fund could have been held validly after the Board of Directors announced that due to pandemonium and confusion, no meeting can be held and that therefore respondents 2 to 5 are still functioning as Directors of the Fund and this application for injunction is without any merits.

(2) The applicant, in his reply, reiterates what was said in the opening affidavit and affirms that the meeting should be deemed to have commenced by the distribution of the agenda and the balance sheet and by the congregation of the members in response to a call to hold the meeting. The petitioner's main contention is that the Board has no power to adjourn the meeting specifically convened for electing Directors, except under the provisions of Section 256 of the Companies Act. He denies what all has been said by the Secretary in his counter-affidavit and alleges that the Registrar of Companies rejected the request of the petitioner for extension of time for holding the 94th annual general body meeting. he, therefore, presses that respondents 2 to 5 who are deemed to have ceased to hold the office of directorship, should be restrained from acting as Directors of the Fund.

(3) The Company Application No. 131 of 1967 is by the Fund and the only material prayer asked for is for the appointment of an independent Chairman for holding and conducting the 94th annual general body meeting of the Fund, as it could not be held earlier though called for by the Board of Directors. This application is also supported by an affidavit sworn to by the Secretary. Here again, the Secretary refers to the disorder which prevailed on 22-4-1967 and as to how the members and non-members gained forcible entry into the Hall by pushing the gates and that rival parties created galata and confusion with a view to see that the meeting was not held and conducted. he reiterates that the Board of Directors recorded the fact of such disorder in the

minutes-book and made an announcement to that effect in the mike. One other contention raised in this application is whether the claim of some of the shareholders to have the election of Directors by ballot was the only process which should be restored to for the election of Directors to the Fund and whether it is not feasible to adopt the practice in vogue for electing the Directors by show of hand. The Fund also refers to the fact that the election of Directors in the past was in accordance with the provisions of the Companies Act and there has been no departure from such accepted rules. The Fund refers to certain proceedings in the City Civil Court and, as I said already, it is unnecessary to refer to them in the view that I intend taking in the matter. The Fund, therefore, prays that to ensure a peaceful holding of the 94th annual general body meeting of the Fund, it is necessary that an independent Chairman be appointed for holding and conducting the same and for holding the election of Directors as per provisions of the Companies Act and for consideration of other subjects to be tabled in the agenda. Notice of this application was directed to be published by me in the newspapers, so that every one of the shareholders may have the same benefit of the same. on such publication of the notice, several shareholders have filed common counter-affidavits and one such counter-affidavit is filed by Mr. S.T. Shanmugesan who happened to be the Chairman of the alleged annual general meeting conducted by the alleged shareholders of the Fund after the Board of Directors expressed their inability to hold and conduct it at the Gokhale Hall on 22-4-1967. In this counter-affidavit, the allegations already traversed in Company Application No. 124 of 1967 are reiterated and the allegations made in the affidavit of the Secretary of the Fund in support of this application are expressly denied. The deponent of this affidavit states that the Registrar has recognised and approved the minutes of the alleged annual general meeting held by the shareholders after the Board expressed its inability to hold it and that several matters in this application are subjudice in the City Civil Court and that this Court has no jurisdiction under Section 186 of the Companies Act to call for an annual general meeting of the Fund and that what the alleged shareholders did on 22-4-1967 is valid and cannot be disturbed and that therefore there is no need for the holding of a second annual meeting for the same purpose. It is significant to note that the applicant in Company Application No. 124 of 1967 also has filed a counter-affidavit almost on similar lines with that filed by Mr. Shanmugesan and others.

(4) In reply, the Secretary of the Fund repudiates every contention of the respective shareholders in each of their affidavits and reiterates the material facts already traversed by me. His main contention is that the Registrar has not recognised the so-called holding of the annual general meeting by the alleged shareholders on 22-4-1967 and that there can be no impediment in the circumstances for the grant of the prayers asked for.

(5) In the view that I intend taking in this matter it may not be strictly necessary for me to find whether respondents 2 to 5 still continue to be the directors of the Fund and whether they have retired on the date when the annual general meeting of the Fund was sought to be convened. It is no doubt true that when an annual general meeting is held, then it is mandatory that out of the 12 Directors of the Fund, one-third of the members have to retire annually and fresh directors have to be elected and appointed in their place. The question, however, in this case is whether any vacancy existed at all. In that sense, it is not strictly necessary to go into the question whether respondents 2 to 5 have stepped down from their office or whether there has been a vacancy in the office of directorship by reason of the fact that notice of the annual general meeting to be convened on 22-4-1967 was given in the manner

provided under the provisions of the Companies Act.

(6) No doubt, the notice of the meeting was given by the Fund. But this Court is now confronted with the question whether a meeting has been held or whether a meeting has commenced. Chamber's Twentieth Century Dictionary explains the word 'commerce' as meaning 'to enter upon'. Even so, the word 'hold' has also been explained in the same dictionary as 'to continue or to conduct'. I have already mentioned in detail the facts. It can unhesitatingly be concluded that on the date when the shareholders were called upon to gather at the Gokhale Hall for the commencement and conduct of the meeting, so that it may be held within the meaning of Sec. 166 of the Indian Companies Act, 1956, it cannot be said with any amount of precision on that circumstance alone that they gathered there with the object of commencing and conducting the annual general meeting. The Secretary of the Fund, who is a responsible officer, has sworn to the affidavit in which he says that members and non-members gathered inside the hall by gaining entry into it by pushing the main door of the meeting hall and occupying the seats wherever they liked without verification. He swears that there were some outsiders also. According to him, there was confusion and pandemonium and shouts and couner-shouts by supporters of rival candidates. Indeed, police help was sought. It was only thereafter when it was felt that it was impossible to commence the meeting or to hold the meeting that the President recorded in the minutes-book as a fact as to what transpired therein and said that annual general meeting could not be held for the reasons stated in the minutes-book as a fact as to what transpired therein and said that annual general meeting could not be held for the reasons stated in the minutes-book. Exhibit A-1 which is the record of such fact in the minutes-book, as noted by the President of the Fund and countersigned by the Secretary, runs as follows:--

'As there is confusion in the hall on account of people rushing into the hall without verification of their signatures and as it is not possible to conduct the meeting, the meeting could not be held.'

That this is so is practically corroborated by Mr. S.T. Shanmugesan in his letter dated 28-4-1967 marked as Ex. A-3 in which he accepts that the Secretary and the Board of Directors were not present in the hall to conduct the annual general meeting. The expression used by Shanmugesan that the directors were unable to conduct the annual general meeting is of special significance, in so far as this case is concerned. The Secretary would also state in the affidavit that after recording the minutes as per Ex. A-1, they remained in the hall and announced over the mike that the meeting could not be held, and such an announcement was made at about 3 p.m. There is nothing compelling for me to reject these statements made by a responsible officer of the Fund. Excepting to deny the allegations, the petitioner in Company's Application No. 124 of 1967 did not satisfy that a meeting could be held and that the Directors avoided the holding of the meeting. Any rational, prudent and reasonable person who is obliged to act in those circumstances would not have done anything better. The Board of Directors, who were present there, including the President and the Secretary, found that the pandemonium which prevailed at that time in the hall made it impossible for them to commence and thereafter hold the meeting. The fact that the agenda and the balance sheet distributed to some of the shareholders prior to the commencement of the meeting takes us nowhere, in so far as this case is concerned. By the mere distribution of the agenda and the balance sheet it cannot by any stretch of imagination be stated that the meeting has commenced. The agenda itself has got to be placed in the meeting; even so the balance sheet; and, if, therefore, the meeting

has not commenced and could not be held by persons responsible for holding it, I am unable to countenance the argument of the learned counsel for the applicant in Company Application No. 124 of 1967 that the meeting should be deemed to have commenced by the very act of distribution of the agenda to some of the shareholders.

Under Article 52 of the Articles of Association framed by the Fund, the Fund shall hold in each year in addition to any other meetings, a general meeting as its annual general meeting specifying it as such at the registered office of the Fund or in some other place within the City of Madras. The 'Fund' has been defined as to mean the Mylapore Hindu Permanent Fund, Limited and includes the Branch Office or offices as the case may be. Under Article 64(a), the management of the Fund shall vest in the Board of Directors appointed at the annual general meeting. On a fair reading of these articles, it is clear that it is the Board of Directors who are enjoined and obliged to hold the annual general meeting as prescribed in Article 52. It is not in dispute that a notice to convene such a meeting was issued and duly published. But what is contended, however, is that the meeting has been convened and the meeting was commenced and that such an annual general meeting having commenced, the resolutions passed by a majority of the shareholders present at that alleged annual general meeting after the directors having recorded the fact that it was impossible to hold a meeting on 22-4-1967 as previously announced, should be deemed to be a regular annual general meeting of the Fund and all the business transacted in the so-called annual general meeting under the chairmanship of S.T. Shanmugesan should be deemed to be valid, regular and enforceable. I am unable to be persuaded to accept this argument. To quote the words of Beasley J., in Watrap S. Subramania Aiyar v. The United India Life Insurance Co., Ltd., : AIR1928Mad1215 :

'It seems to me that it would be travesty of the law if a person who has deliberately brought about a state of affairs should be allowed to take exception to that state of affairs and use that changed state for this his own advantage.

It is common law principle that a meeting can adjourn itself if the circumstances do warrant. In this case, the pandemonium and the confusion that were admittedly created by the shareholders made it practically impossible for the directors to commence and conduct and hold the meeting. Therefore, after recording such a fact in Ex. A-1, they announced that the meeting could not be held. Persons who gained entrance unauthorisedly and without following the procedure prescribed by the Board of Directors who were in charge of the affairs of the Fund, cannot be allowed to plead that what they have done subsequently is an act which is regular and which ought to be regularised. It would be indeed a travesty of law as well as justice, as pointed out by the eminent Judge. The shareholders who subsequently purport to have met and passed certain resolutions, did so at their own risk. They were not conscious and indeed were not aware that they could not hold an annual general meeting within the meaning of Section 166 of the Companies Act. Such an annual general meeting can only be held by the Board of Directors, and if for any reasons they did not hold the same, they have got other remedies to pursue. This is not a case under S. 167 of the Indian Companies Act, because there was not default on the part of the Board of Directors to hold the meeting. The powers of the Central Government to call for a meeting can be invoked only if there is initial default. In the absence of such an initial default or initial laches on the part of the Board of Directors in management of the affairs of the Fund, it cannot be successfully contended that it is the Central Government alone in the circumstances of this case that could call for the annual meeting and this Court as Company Courts has no jurisdiction to give any

directions regarding the holding of the Fund's annual general meeting. To repeat, there has not been a commencement of the meeting resulting in the holding of such meeting within the meaning of Section 166 of the Act. The Board of Directors bona fide wanted to commence such a meeting and for that purpose they convened the meeting. But they could not do so because the circumstances were beyond their control. What the President did in the events that happened and which are practically not disputed seriously, was that which every rational human being could have done.

The interdict in Section 186 of the Companies Act also cannot equally be brought into motion to prevent this Court from exercising its discretion in giving such directions as are necessary. In fact, this aspect really arises in Company Application No. 131 of 1967 which I shall deal with presently. Suffice it, however, to say that the congregation by the shareholders (said to be shareholders) after the Board of Directors decided that it was impossible for them to hold the meeting is valid and regular reason is something which is unheard of and which cannot be implemented or given effect to. A fortiori it cannot be said that the resolutions passed by some of the shareholders at the meeting held under the chairmanship of S.T. Shanmugesan as set out in Ex. A-3 can be deemed to be resolutions passed by the body of shareholders regularly assembled at a meeting properly convened and held for the purpose, in the eye of law. This is not a case wherein the Court is directing the Board of Directors to call for a meeting. This is a case where the Court is called upon to interpret whether the meeting convened and called by the Board of Directors did commence at all. I am of the opinion that the meeting never commenced at all and therefore the question of holding a meeting does not really and strictly arise. The decision in Kailash Chandra Datta v. Sadar Munsif, Silchar : AIR1925Cal817 , is very apposite in this case. At p. 520 (of ILR) = (at p. 818 of AIR), the learned Judge states:

'There were proper ways in which a meeting of a company can be called either by the directors in accordance with the provisions of the Articles of Association or by the shareholders on requisition also in accordance with the provisions of Articles of Association. There is only one other way of which I know, apart from any special Article of Association, that a meeting of a company can be called and that is by a direction of a Court to the Liquidator in winding-up proceedings. The mere fact that certain persons who happened to be shareholders of the company met together at a private house and purported to pass resolutions appointing directors and so on does not make that a meeting of the Company. For a meeting to be meeting of the company, it must be a meeting convened in one of the ways to which I have referred and convened strictly in accordance with the Article of Association.'

The same problem can be viewed in another perspective as well. Under the articles, the directors are given a clear mandate to be in charge of the affairs of the Fund and are equally obliged to hold the annual general meeting in accordance with law. This mandate to the directors, it is to be altered at all, it can only be done under the Memorandum of Articles and not otherwise. So long as the Board of Directors acted within the rule of law and did what they could do as prudent and reasonable men, there is nothing that could be said against them. As I have already stated, the meeting said to have been held by the alleged shareholders, be they in majority after the record of fact made in Ex. A-1 and after the announcement made by the Board of Directors in the Gokhale Hall, that they were unable to conduct the meeting cannot legitimately be characterised as the annual general meeting of the Fund.

(7) Both the applications were again reposted for further arguments at the request of

the counsel on both sides. Mr. Nainar Sundaram appearing for some of the respondents in C.A. No. 131 of 1967 practically re-argued the case as a whole. On the merits, his contentions are that the meeting should be deemed to have been held since a notice of convening the meeting was given, since the shareholders congregated by reason of such a call by the Board of Directors, and since the agenda and the balance sheet were distributed by the authorities. he also urged relying upon judicial precedents that the meeting said to have been convened after the announcement by the Board of Directors that it was not possible to hold it, is a valid one in the eye of law and there is no necessity for the Fund to call for another annual general meeting and seek directions from this Court for the appointment of a Chairman to preside therein. He referred to a passage at p. 422 of Gore Browne's Handbook on Joint Stock Companies, 41st Edn., which runs as follows:--

'It is only at general meetings that the shareholders can exercise any control over the affairs of the company.....It is the duty (of the Chairman) to preserve order, conduct proceedings regularly and take care that the sense of the meeting is properly ascertained with regard to any question before it.'

But this principle has no relevancy in so far as this case is concerned, because no meeting was commenced for the general to act. A passage in Halsbury's Laws of England, 2nd Edn., was referred to substantiate the wellknown principle that at a meeting properly held, the Chairman cannot adjourn the meeting or dissolve it while any of the business for which it was called remains untransacted. This again is a principle which is indisputable, but unfortunately inapplicable to the facts of this case. Mr. Nainar Sundaram thereafter quoted the following three decisions : National Dwellings Society v. Sykes, 1894 3 Ch 159, John Kennedy Carruth v. Imperial Chemical Industries, Ltd., 1937 AC 707 and Narayan Chetti v. Kaleeswarar Mills, Ltd., : AIR1952Mad515 .

In so far as the first case is concerned, it deals with the duties of a Chairman. The second case concerns itself with an annual meeting which was properly convened and held. The third cited precedent also sets out the well-known ratio that the Chairman of a meeting is not entitled to stop the meeting at his own will and pleasure. I am afraid these cases have no real bearing on the point at issue in the applications under consideration.

On more than one occasion I have indicated that there has not been a commencement of the meeting at all and it is, therefore idle to speculate whether there was a holding of the meeting.

Lastly, he contended that this Court has no power to call for a meeting and that S. 186 of the Companies Act is an interdict against the Court for calling for an annual general meeting. This Court, no doubt, is conscious of the limitations prescribed by S. 186 of the Act. But the learned counsel has failed to appreciate that the direction asked for in C.A. No. 131 of 1967 is not to call for an annual general meeting, but to appoint a Chairman to supervise and preside over the annual general meeting to be called for by the Board of Directors. In fact, on an earlier occasion and under similar circumstances, this Court did appoint a Chairman for this very fund. In C.A. No. 138 of 1963 (Mad.), Ramamurti J., who disposed of the said application, observed:

'There is ample inherent power in the Court to give directions asked for. As I mentioned already, on two prior occasions, under somewhat similar circumstances,

on one occasion Ganpatia Pillai J. and on another occasion Ramachandra Iyer J. (as he then was) issued similar directions. My attention has been drawn to a Bench decision of the Allahabad High Court in British India Corporation v. Robert Menzies, : AIR1936All568 , in which it was held that the company Court has got ample inherent jurisdiction to issue directions for the purpose of enabling the company to perform its statutory duties as provided in the Companies Act. In this case, it is obvious that the company has got to perform its statutory duty of convening an annual general body meeting and several important matters and businesses have got to be transacted at that annual general meeting. it is for no fault of the company that it is not in a position to convene the meeting and it is clear that this is a case in which the company ought to and is anxious to perform and carry out its statutory duties. under the circumstance, I am of opinion that this Court has ample inherent jurisdiction to issue necessary and appropriate directions both to direct the company to perform its statutory duty and also to enable the company to perform its statutory duty.'

I respectfully agree with the observations of the learned Judge and find that C.A. No. 131 of 1967 is maintainable and this Court has got jurisdiction to issue the directions prayed for, as without which there will be a stalemate and the apprehension in the mind of the Fund and the Board of Directors who are statutorily obliged to call for the annual general meeting can never be relieved and there is every possibility of history repeating itself.

(8) Mr. N.C. Raghavachariar appearing for the Fund quoted certain relevant passages. He invited my attention to Palmer's Company Precedents, 17th Edn. at p. 492, which states that if a meeting has to be dissolved, members who remain behind cannot continue the business, Albert Crew on Public Company and Local Government Meetings, 16th Edn., at p. 164, is of the opinion that a meeting can of course be adjourned before any business is done.

(9) I am satisfied that in the circumstances of this case the direction asked for by the Fund to appoint an independent Chairman to preside over the annual general body meeting which it propose to call for is justified and this Court is obliged to give such a direction, because it has to assist the Fund in doing and performing its statutory obligations. To avoid impracticable situations arising and repeating themselves and to enable the Fund to discharge its statutory duty to conduct the annual general meeting peacefully, prayer 2 in C.A. No. 131 of 1967 is ordered. The Commissioner to be appointed as Chairman will decide at the meeting as to the manner in which the election of the directors should take place, to wit, whether it should be by ballot or by show of hands. It is also left to him to decide as to how and in what manner proxy votes should be received or rejected, as the case may be. Having regard to all the circumstances, I am of the view that an Advocate of this Court should be appointed as Chairman of the proposed meeting, so that he could conduct the proceedings in accordance with law. Sri. K. Venkateswara Rao, Advocate, is appointed as Commissioner to perform the functions of a Chairman at the meeting to be convened by the Fund. The applicant shall pay a sum of Rs. 750 in the first instance to him within a week from this date. The actual amount of remuneration shall be fixed later.

(10) If the meeting has, therefore, not commenced at all and has not been consequentially held by the Board of Directors, respondents 2 to 5 continue to be the Directors because they could only retire when the annual general meeting is held. In this case I have held that the annual general meeting has not been so held. Therefore, the applicant in Application No. 124 of 1967, is not entitled to the relief asked for in

the Judge's summons praying for an interdict against respondents 2 to 5 from exercising the functions as directors of the Fund. C.A. No. 124 of 1967 is, therefore, dismissed. There will be no costs in both the applications.

JHS/DVC

(11) Order accordingly.