

State of Karnataka Vs. Mysore Coffee Curing Works Ltd.

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Court : Karnataka

Decided On : Jan-20-1982

Reported in : [1984]54CompCas360(Kar)

Judge : M.P. Chandrakantaraj, J.

Acts : [Companies Act, 1956](#) - Sections 31(1), 106 and 107

Appeal No. : Company Petition No. 34 of 1981

Appellant : State of Karnataka

Respondent : Mysore Coffee Curing Works Ltd.

Advocate for Def. : Jayaram & Jayaram, Advs.

Advocate for Pet/Ap. : Government Adv.

Judgement :

Chandrakantaraj Urs, J.

1. In this petition under ss. 106 and 107 of the Companies Act (hereinafter referred to as 'the Act'), the State of Karnataka has moved this court to restrain the respondent-company from amending arts. 70(a) and 97 of its articles of association, without the consent of the petitioner at the meeting to be held on December 9, 1981.

2. This court issued emergent notice to the respondent regarding admission of the petition and, in the meanwhile, issued stay of the operation of any resolution passed at the general meeting of the company held on December 9, 1981, relating to the amendment of the aforementioned articles of the articles of the articles of association of the company.

3. The respondent company has entered appearance and filed its counter affidavit by way of objections. It is not necessary to traverse in detail the averments made in the counter affidavit. The main points made out by Sri A. N. Jayaram, learned advocate for the respondent company, are :

(1) That the petition is not maintainable under s. 106 or s. 107 of the Act as the proposed amendments do not affect the rights of any class of shareholders of the company as the right attached to such shares of such classes are in no way affected by the proposed amendments to arts 70(a) and 97 of the articles of association of the company, and

(2) That the right of the company to amend its articles is a right not fettered by any contractual impediment which is not specially provided for under s. 31 of the Act.

4. He, therefore, submits that the petition seeks to restrict the statutory right conferred on companies to amend its articles of association and the petition deserves to be dismissed.

5. To appreciate the arguments of the learned counsel, it is necessary to set out briefly the facts which are not in dispute.

6. The Mysore Coffee Curing Works Limited (respondent herein) was duly incorporated on 13th September, 1938, and is deemed to be a company registered under the Act. In accordance with article 5 of the memorandum of Association of the company, the share capital of the company is Rs. 50,00,000 divided into 4,00,000 equity shares of Rs. 10 each and 10,000, 9.5% cumulative preference shares of Rs. 100 each.

7. In the counter affidavit filed, it is stated that the cumulative preference shares have, however, never been issued and the subscribed capital of the company is

Rs. 19,74,620 consisting entirely of the wholly paid-up entry shares of Rs. 10 each. It is further stated that in 1980 the company issued right shares in the ratio 1 : 1 permitting its shareholders to buy ordinary equity shares in proportion to their existing holding and that the Government (petitioner) did not act on that offer while the other shareholders did. In the result, as on date of the petition the Government held equity shares amounting to 19.6% of the total subscribed capital. It was in these circumstances having regarded to the later capital ratio between the Government on the one hand and the other shareholders on the other hand that arts. 70(a) and 97 of the articles of association of the company were required to be amended.

8. It is useful to state that art. 70(a) of the articles of association of the company provides for the State Govt. to nominate three directors on the board of directors of the company in consideration of having subscribed to the capital of the company, while art. 97 provides for the Governor of the State of Karnataka to nominate one of the Government nominees as chairman of the board of directors of the company.

9. The learned counsel for the respondent contends that these are not rights attached to the shares as such, but original contractual obligation between the promoters of the company and the State Govt. at the time of its inception and like any other article, is liable to be altered or amended or deleted whenever the company thinks it fit to do so. In other words, the thrust of the argument is that the right to nominate directors as well as the chairman of the board of directors flow not from the shares held by the State Govt., but the rights conferred on the State Govt. are only by virtue of the relevant articles of the articles of association of the company as a result of agreement.

10. There is force in the above contention. Section 106 as well 107 of the Act provides for a particular class of shareholders to move this court whenever the right attached to that class of shares are sought to be altered by the company and in no other circumstances. Normally if one is to take into consideration the class of shares of the respondent company, i.e., ordinary equity shares and the cumulative preference shares, the rights attached to those shares can be easily stated as

being;

(1) Equity Shares :

(i) Right to vote,

(ii) Right to receive dividends,

(iii) Right to maintain its face value, and

(iv) Right to transfer freely, without restriction, the share to another.

(2) Cumulative Preference Shares :

(i) Right to receive the prescribed dividend,

(ii) Right to transfer, and

(iii) Right to vote in case the company has not paid the prescribed dividend in respect of that class of shares.

11. Beyond these rights, nothing else is provided for in the memorandum and articles of association of the company.

12. It is not disputed that there are no other class of shares which the Government holds by virtue of which they have the right of nomination of directors and the chairman of the board of directors. Therefore, the proposed amendment of arts. 70(a) and 97 of the articles of association of the company, by depriving the State of Govt. of the power on nomination of the directors as well as the chairman of the board of directors, is not a matter falling within the scope of interference by this court under ss. 106 or 107 of the Act.

13. Section 31 of the Act provides for the alteration of articles by special resolution. Sub-s.(2) of s. 31 of the Act provides that :

'Any alteration so made, shall subject to the provisions of the Act, be as valid as if originally contained in the articles of association and be subject in like manner to alteration by special resolution.'

14. The only restriction on the unfettered power under sub-s. (1) of s. 31 of the Act is the restriction imposed by the proviso to that section and it is that, a public company cannot convert itself into a private company by merely carrying out an amendment of the articles of association of such a company. If the power conferred sub-s. (1) of s. 31 of the Act is to be given full effect by the court, then the provisions contained as contractual obligations in art. 70(a) and art. 97 of the articles of association of the company, cannot be construed as controlling the amending powers given to a company under s. 31(1) of the Act.

15. In the light of the above discussion it is clear that the State Govt. cannot invoke the protection of this court continue a state of affairs which no longer is warranted having regard to the pattern of shareholders and the proportion of shares held by the Government and the other shareholders. If the Government has 1/5th of the shares only, then it cannot certainly have the right to nominate the directors or appoint the chairman of the board of directors of the company unless the other shareholders permit the same. Evidently other shareholders are not willing to continue the existing provisions of art s. 70(a) and 97 of the articles of association of the company.

16. I, therefore, hold that this petition is not maintainable under s. 106 or s. 107 of the Act.

17. The learned counsel for the petitioner has not pointed out any other provision of the Act under which this petition can be maintained.

18. In the result, this petition is dismissed. There will be no order as to costs.