

Raymon Engineering Works Ltd. Vs. the Union of India and ors.

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Court : Delhi

Decided On : Aug-01-1969

Reported in : ILR1970Delhi126

Judge : Hardayal Hardy and; S.N. Andley, JJ.

Acts : [Companies Act, 1956](#) - Sections 269

Appeal No. : Letters Patent Appeal No. 46 of 1969

Appellant : Raymon Engineering Works Ltd.

Respondent : The Union of India and ors.

Advocate for Def. : Mr. B. Sen

Advocate for Pet/Ap. : B. Dutt,; B.N. Sen,; D.K. Kapur and;

Judgement :

S.N. Andley, J.

(1) This is an appeal against the judgment and order dated April 24, 1969 of Rangarajan J.. whereby he dismissed the appellants' petition (Civil Writ No. 357 of 1968) which had challenged, inter cilia, orders dated December 31, J964 and February 28, 1967 passed by the Company Law Board in purported exercise of powers under section 269 of the [Companies Act, 1956](#), hereinafter referred to as

'the Act' as amended by the Companies (Amendment) Act, 1960 (Act 65 of 1960), hereinafter referred to as the 'Amendment Act'. Shortly stated, the Company Law Board had, by the first order, imposed various conditions while granting approval to the first appointment of M.C. Ray as Managing Director of the appellant. Two. of the conditions to which objection has been raised are (1) that M.C. Ray will secure repayment of Rs. 2,75,000.00 to the appellants and (2) that approval shall be obtained also to the re-appointment, if any, of the said M. C. Ray after the expiry of the period of his first appointment. By the second order, the Company Law Board dismissed the application of the appellant Company for approval to the re-appointment of M. C. Ray. These two orders were challenged on the ground that they were ultra virus section 269 of the Act and were mala fide, unjust and unconscionable. The learned Single Judge did nto accept these contentions and dismissed the writ petition.

(2) The appellant Company was incorporated on November 30, 1954 as a public limited company. It was, thereforee, an existing company within the meaning of section 3(2) of the Act. Raymon & Company (India) Private Limited, hereafter referred to as 'the Private Company', was incorporated in 1951 with two shareholders, namely, M. C. Ray and his wife. The Private Company was appointed Managing Agent of the appellant Company on February 7, 1956 for a period of ten years. By a deed of conveyance dated June 25, 1957, the Private Company had purchased a Bone Mill in consideration of a sum of Rs. 3,25,000.00. By a resolution dated June 12, 1957 of its Board of Directors, the appellant Company agreed to purchase the aforesaid Bone Mill from the Private Company for Rs. 10,00,000.00 to be paid to the Private Company in shares in the appellant Company. For that purpose the appellant company applied to the Controller of Capital Issues in July 1967 for the issue of 100,000 equity shares of the value of Rs. 10.00 each to the Private Company. As a result of negotiations, the Controller of Capital Issues agreed, by his letter dated January 5, 1969, to the issue by the appellant company of ordinary shares worth Rs. 6,50,000.00 to the Private Company as full consideration for the purchase of the Bone Mill.

(3) The sale deed was executed on January 17, 1959.

(4) It is alleged that on account of the insistence of the foreign collaborators the appellant Company terminated the Managing Agency agreement with the Private Company in 1963 although it was to expire in 1965 and desired M. C. Ray to be appointed as Managing Director.

(5) At the adjourned general meeting of the appellant Company held on October 4, 1963, M.C. Ray was unanimously appointed its Managing Director for a period of 5 years. Since this appointment came about after the Amendment Act had come into force. it was made subject to the approval of the Central Government under section 269. The appellant Company had appointed M. C. Ray with effect from September 23, 1963 on a remuneration of Rs. 6,500.00 per month for a period of five years with various other facilities. On December 7, 1963. the appellant company submitted the requisite application for approval. After some correspondence between the appellant Company and. the Company Law Board, the Liter, by their letter dated December 5, 1964, refused to accord the approval. Thereafter, the appellant company made further representations and upon considering them, the Company Law Board by their letter dated December 31, 1964 containing the first impugned order approved the appointment for a period of 3 years subject to the following amongst other conditions : (1) M. C. Ray was to secure in five yearly Installments the refund by the private company to the appellant company of a sum of Rs. 2,75,000.00 being the difference between the actual price paid by the private company for the purchase of the Bone Mill plus Rs. 50,000.00 incurred in improvement and the price at which it was sold to the appellant company ; (2) the re-appointment of M.C. Ray, if any. as the Managing Director of the company on the expiry of three years shall require fresh approval of the Company Law Board.

(6) The other conditions imposed are nto material to the controversy in the appeal. Receipt of this approval was acknowledged by the appellant company by its letter dated January 7, 1965. It is nto disputed that only the first Installment of Rs. 55,000.00 was paid. With regard to the refund of the amount of Rs. 2,75,000.00. the appellant company made several representations to several authorities but they were nto accepted.

(7) The term of three years expired on September 22, 1966. The appellant company passed a resolution on October 29, 1966 re-appointing M.C. Ray as its Managing Director for a further period of five years and in accordance with the condition imposed in the order contained in the aforesaid letter dated December 31, 1964 submitted an application for approval of the re-appointment. On February 28, 1967 the Company Law Board rejected the application for re-appointment and on March, 14, 1968 also rejected the application of the appellant company for review of this order. It was then that the writ petition was filed in this Court on May 2, 1968.

(8) Mr. B. Sen, learned counsel appearing for the respondents, wanted to argue that the writ petition had been filed after a great deal of delay. This objection is not raised in the counter-affidavit filed on behalf of the respondents. It does not appear to have been raised even before the learned Single Judge. Under the circumstances we are of the view that this plea cannot be allowed to be raised for the first time in appeal. The objection on the ground of delay is really to the first impugned order dated December 31, 1964. Even if such a plea was entertainable, we would not be inclined to uphold it because it is evident that the appellant company have been agitating against this order from 1966 onwards.

(9) Another contention raised on behalf of the respondents is that the appellant Company had accepted the conditions imposed by the first impugned order dated December 31, 1964 and the Private Company had even paid the first Installment of Rs. 55,000.00 and, therefore, they should not be heard in a petition under Article 226 of the Constitution. Now, what had happened was that the appellant Company had, by their letter dated January 7, 1965, merely acknowledged receipt of the said order. It is true that the appellant Company received the first Installment of Rs. 55,000.00 from the Private Company but such receipt cannot constitute such an acceptance of the said order as to create an estoppel against the appellant Company. The subsequent representations not only by the appellant Company but by M. C. Ray clearly show that there was no acceptance of the said order so as to deprive the appellant Company of its right to challenge the validity of the said order.

(10) One of the pleas raised by the petitioners is the plea of malu fides. The plea contains allegations against one of the former Finance Ministers and certain officials who have not been made parties to the petition. As to this plea the learned Single Judge has observed:-

'I am least impressed by the argument of malu fides which has been advanced. Any attack of personal dishonesty leading to mala fides against certain officials, including the former Finance Minister, could not even be listened to unless these persons are made parties to the petition and thus given an opportunity to rebut this allegation.'

(11) Agreeing with the observation, we did not hear the appellants, counsel on the allegations of mala fides.

(12) The next argument on behalf of the appellant Company is that the conveyance of the Bone Mill by the Private Company to the appellant Company being legal-it was not disputed by Mr. B. Sen, learned counsel for the respondents, either before us or before the learned Single Judge that it was so-the condition of repayment of Rs. 2,75,000.00 to the appellant Company was unjust and unconscionable. Now, M. C. Ray was almost the owner of the Private Company. He was one of the promoters of the appellant Company. As such he could be said to be in a dominating position qua the appellant paid Company. Ex facie there is a vast difference between the price by the Private Company (Rs. 3,25,000.00) and the price paid by the appellant Company (Rs. 6,50,000.00) for the purchase of the Bone Mill. Further the Private Company were the Managing Agents of the appellant Company. Against these facts are the contentions of the appellant Company that the transaction was a legal business transaction based upon valuation reports of well known valuers and was for the benefit of the appellant Company. Upon these facts, is it possible for us to say that no reasonable body of men could have come to the conclusion that this transaction was unjust or unconscionable We are clearly of the view that we cannot say so. We may only add that the decision of the Company Law Board for imposing the condition of repayment of Rs. 2,75,000.00 was arrived at after giving full opportunity to the appellant Company and M.C.Ray to represent their case. We do not, therefore,

find anything objectionable in the grant of approval subject to this condition . It cannot be doubted that the imposition of such a condition is well within the scope of the power exercisable under sub-section(l) of section 269 read with section 637-A of the Act.

(13) The last contention is that section 269 does not require approval for re-appointment of a Managing Director in a case covered by sub-section (1) of section 269 and, therefore, the condition imposed by the Company Law Board in the impugned order dated December 31, 1964 requiring the obtaining of such approval in the event of the re-appointment of M. C. Ray was illegal and the aforesaid two impugned orders are without jurisdiction.

(14) Section 269 of the Act as amended by the Amendment Act is in these terms:-

'269.(1) In the case of a public company or a private company which is a subsidiary of a public company, whether such public company or private company is an existing company or not, the appointment of a person for the first time as a managing or whole-time director shall not have any effect unless approved by the Central Government: Provided that in the case of a public company, or a private company which is a subsidiary of a public company, incorporated after the commencement of the Companies Amendment) Act, 1960, the appointment of a person as a managing or whole-time director for the first time after such incorporation may be made without the approval of the Central Government but such appointment shall cease to have effect after the expiry of three months from the date of such incorporation unless the appointment has been approved by that Government. 2. Where a public company or a private company which is a subsidiary of a public company, is an existing company the re-appointment of a person as a managing or whole-time director for the first time after the commencement of the the Companies (Amendment) Act, 1960, shall not have any effect unless approved by the Central Government.'

(15) SUB-SECTION(L) of section 269 required approval of the appointment for the first time of a person as Managing or whole-time Director by a company, be it an existing company or no. Subsection (2) applies only to an existing company and requires approval of the re-appointment for the first time of a person as

managing or whole-time director after the commencement of the Amendment Act.,The proviso makes an exception in the case of the appointment of a person for the first time as managing or whole-time director by a company incorporated after the Amendment Act. It permits such appointment but requires the obtaining of approval within three months of incorporation. The section requires approval qua the person appointed and nto qua the office of managing or whole-time director, we are of the opinion that the section meets various situations in the following way:- (1) An existing company appointing a person for the first time after the Act would require approval under sub- section(I). (2) An existing Company having a Managing or whole-time Director before the commencement of the Act would nto require any approval to his continuation after the commencement of the Act till the expiry of his term which, by reason of section 317(2) of the Act, cantto exceed five years after the commencement of the Act. If the Company re-appoints him, then his re-appointment for the first time will have to be subject to approval under sub-section (2). (3) A company incorporated after the commencement of the Act may appoint a Managing or whole-time Director but, by reason of the proviso to sub-section (1), approval of the person appointed will have to be obtained under sub-section (1) before the expiry of three months after incorporation.

(16) It is only appointment or re-appointment of a person for the first time which requires approval. Every successive re-appointment of the same person does nto require approval. The object is to screen the person concerned once either on his appointment for the first time or, in the case of an existing company, on his his reappointment for the first time.

(17) thereforee, follows that re-appointment of a person whose appointment for the first time has been approved under sub- section(I) does nto require approval under sub-section (2).

(18) Although the stand taken by the respondents in their counter affidavit is to the contrary, the correctness of this interpretation is conceded before us by Mr. B. Sen, learned counsel for the respondents, as it was conceded by him before the learned Single Judge because he made it quite clear that he was seeking to bring this case nto under sub-section(2) of section 269 but under sub-section (1) of that

section read with section 637-A of the Act. Sub-section(2) of section 269 would not apply to this case as approval of the appointment of M. C. Ray for the first time had been obtained under sub-section(l) of section 269. We have therefore, to examine the scope and content of the power under sub-section(l) read with section 637-A of the Act. The latter section is in these terms:-

'637-A.(1) Where the Central Government is required or authorised by any provision of this Act,- (a) to accord approval, sanction, consent, confirmation or recognition to or in relation to, any matter; (b) to give any direction in relation to any matter; or (c) to grant any exemption in relation to any matter, then, in the absence of anything to the contrary contained in such or any other provision of this Act, the Central Government may accord, give or grant such approval, transaction, consent, confirmation, recognition, direction or exemption subject to such conditions, limitations or restrictions as it may think fit to impose and may, in the case of contravention of any such condition, limitation or restriction, rescind or withdraw such approval, sanction consent, confirmation, recognition, direction or exemption. (2) Save as otherwise expressly provided in this Act, every application which may be, or is required to be, made to the Central Government under any provision of this Act - (a) in respect of any approval, sanction, consent, confirmation or recognition to be accorded by that Government to, or in relation to, any matter; or (b) in respect of any direction or exemption to be given or granted by that Government in relation to any matter; or (c) in respect of any other matter, shall be accompanied by such fee not exceeding one hundred rupees as may be prescribed: Provided that different fees may be prescribed for applications in respect of different matters, or in case of applications by companies, for applications by different classes of companies.'

(19) The present case being a case of approval is covered by clause (a) of sub-section (1) of this section.,

(20) SUB-SECTION(L) of section 269 provides for the obtaining of an approval in a case covered by it. It does not provide that such approval shall be unconditional. therefore, the provisions of section 637-A(1)(a) will apply and the Central Government, while granting approval, can impose such conditions as it thinks fit in

the absence of any provisions to the contrary. It was contended by Mr. B. Datta, learned counsel for the appellants, that such a contrary provision is to be found in sub-section (2) of section 269. We do not agree to the argument as presented. The meaning to be given to the words 'in the absence of anything to the contrary' is that such a provision of the Act should say that the approval etc. is to be given unconditionally or itself specifies the conditions.

(21) But then section 637-A(1) goes on to say that the conditions etc. which are imposed should be such as the Central Government 'may think fit' to impose. The quoted words do not imply a purely subjective decision of the Central Government. In fact Mr. B. Sen fairly conceded that the conditions that are imposed should be germane to the Act and should be such as are consistent with the provisions of the Act.

(22) The question is whether the requirement in the impugned order dated 31st December, 1964 that upon re-appointment the appellant Company is to seek the approval of the Central Government is illegal or without jurisdiction. Mr. Sen contended that the Act has imposed several measures to control the activities of companies and there is nothing wrong in the Central Government approving a first appointment as Managing Director under sub-section(1) of section 269 subject to the condition that the re-appointment of such person will also be subject to approval. He has urged that the Central Government may fix a period of probation during which it can watch the activities of the person appointed and then they may approve his re-appointment only if his activities during the probationary period are such as are not against the interests of the Company or of its Share-holders. This argument does not appeal to us. If that had been the intention of the Legislature, then there should have been a provision for approval of every re-appointment and not only the first reappointment in a case covered by sub-section(2) of section 269. The so-called screening must take place at the time of the first appointment under sub-section(1) or the first re-appointment under sub-section (2). Once that has been done, it is for the company to determine whether to make successive reappointments. This construction would not deprive the Central Government of their control. Firstly, because if a person is appointed or re-appointed subject to any conditions, the violation of any such condition would entitle the Central

Government to step in and take appropriate remedial measures under section 637-A and such person can also be penalised under section 637-A. Secondly, there are ample provisions in the Act for taking action against a delinquent director in the event of his acting against the interests of the company. We are of the view that subject to the restrictions specifically placed by various provisions of the Act, the Company has been given liberty to manage its own affairs.

(23) As we read section 269, we are of the view that neither this section nor any other provision of the Act contemplates an approval for reappointment of a person whose appointment for the first time has been approved under sub-section(I). therefore, any provision for obtaining approval for the re-appointment of such a person would nto be consistent with the purpose and policy of section 269 for the reason that the condition would be restrictive of a right enjoyed by the company to re-appoint without approval. In this view of the matter, such a direction cannto be one which the Central Government 'may think fit to impose' under section 637-A. If the Central Government imposes such a condition while approving the appointment for the first time, it would tantamount to impinging upon the right of the company preserved by the Act and such a condition will neither be germane to nor consistent with the provisions of section 269 or of the Act. That being so, the order dated February 28, 1967 refusing to accord approval to the re-appointment of M. C. Ray as Managing Director is illegal and must be quashed. For the some reason, the said condition for obtaining the approval of the Central Government on re-appointment contained in the order dated December 31, 1964., must also be struck down as illegal. The other conditions imposed in the order dated December 31, 1964, cannto be said to be inconsistent with the provisions of the Act and they are also severable from the condition for obtaining approval of re-appointment.

(24) In the result, the appeal is allowed. Accordingly, we issue a writ of certiorari quashing condition No. 4(iii) in the order, dated December 31, 1964 which is in the following terms:- (iii) That the re-appointment of Shri M. C. Ray, if any, as the Managing Director of the Company on the expiry of his tenure of three years, as mentioned in paras 1 and 3 above, shall require fresh approval of the Company Law Board under section 269 of the Act after compliance with all the legal requirements.'

(25) We further quash the order of the Company Law Board, dated February 28, 1967 in its entirety.

(26) The appellant Company will have its costs of the appeal and of the writ petition which are assessed at Rs. 500.00.

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