Johny Chandy and ors. Vs. Catholic Syrian Bank Ltd. and ors.

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Court : Kerala

Decided On : Apr-25-1995

Reported in : AIR1995Ker362; [1995]84CompCas520(Ker)

Judge : P.K. Balasubramanyan, J.

Acts : Companies Act, 1956 - Sections 166, 188, 284 and 291; Code of Civil Procedure (CPC) , 1908 - Order 39, Rule 1

Appeal No. : C.M.A. No. 317 of 1994

Appellant : Johny Chandy and ors.

Respondent : Catholic Syrian Bank Ltd. and ors.

Advocate for Def. : S. Narayana Poti, Adv. General and; M. Hemalatha, Adv.

Advocate for Pet/Ap. : R. Ramdas and; T.R. Govinda Wariyar, Advs.

Disposition : Appeal dismissed

Judgement :

P.K. Balasubramanyan, J.

1. The plaintiffs are the appellants. They are the share-holders of the Catholic Syrian Bank Ltd., hereinafter called the bank. The Board of Directors of the bank resolved on 1-8-1994 by Ext. B18, to call the 73rd Annual General Meeting of the

Bank on 28-9-1994. Ext. A21 notice dated 18-8-1994 was issued to the share-holders in that behalf. On 12-9-1994 a special notice invoking Sections 284 and 190 of the Companies Act,. 1956 was given by three of the share-holders, of an ordinary resolution to remove three of the members of the Board of Directors and proposing to elect in their stead, three other members as Directors. The notice is marked as Ext. B16 and the resolutions for removal of defendants 9, 10 and 11 are marked as Exts. A23 to A25. Exts. A23 to A25 wre sent along with Ext. B 16. The resolutions also proposed that plaintiffs 3 to 5 be elected in place of the Directors proposed to be removed. The said members also forwarded the said resolution to the members of the bank including the Directors sought to be removed. The Secretary of the Bank put up the notice Ext. B16 along with the resolutions and his note to the effect that the resolutions were in order. On 14-9-1994, the Board of Directors considered the said resolutions and decided to take legal opinion on the validity or otherwise of the said resolution. It was also resolved that subject to permission to be obtained from the Registrar of Companies, the Annual General Meeting may be postponed to 19-10-1994. Ext. B20 is the minutes of the meeting and Item No. 78 of the agenda relates to this decision.

2. After the legal opinion was received, the Board considered the questions of the validity of the notice to remove the members of the Board at its meeting on 29-9-1994. It is seen that the legal opinion was to the effect that since a notice under Section 284 of the Companies Act ought to conform to Section 188 of the Act, the resolutions moved by the three members were not valid. It was therefore decided to rule out the resolutions Exts. A23 two Ext. A25. One of the Directors opposed the rejection of the said resolutions and the two Reserve Bank of India nominee Directors indicated that they were not parties to the resolution. It may be noticed here that no notice had been published pursuant to the decision of the Board on 14-9-1994 to postpone the Annual General Meeting. But on 21-9-1994 the bank wrote Ext. B22 letter to the Registrar of Companies seeking permission to postpone the Annual General Meeting. By his communication of the same date marked Ext. B23, the Registrar gave the permission. On 23-9-1994, notices were published in the newspapers giving notice to the share-holders of the adjournment of the Annual General Meeting fixed to be held on 28-9-1994. The date of adjourned meeting was not given. The communication indicated that the date of

the adjourned Annual General Meeting would be advised individually. Ext. B29 a copy of that paper publication. Subsequently, another notice was published in the newspapers of 6th Oct. 1994 giving notice to the share-holders that the postponed Annual General Meeting will be held on 29-10-1994 at the earlier venue notified. Copy of this publication is marked as Ext. B26. Individual notices dated 4-10-1994 were also issued intimating the share-sholders of the postponed Annual General Meeting being held on 29-10-1994.

3. On 17-10-1994, the appellants filed the suit O.S. No. 1261 of 1994 on the file of the Subordinate Judge's Court of Trichur and also filed I. A. No. 7929 of 1994 for an interim injunction restraining the defendants, the Bank and the Board of Directors from convening the Annual General Meeting on 29-10-1994 and restraining respondents 7 to 11 from participating in any Board meeting on the ground that they had already been removed. It appears that on 28-9-1994 the date originally fixed for the holding of the Annual General Meeting, 433 members of the Company gathered together in the place indicated in the original notice, Ext.A21. According to the appellants in addition to considering the resolutions included in the agenda Ext. A21, the members present also took up and passed the resolutions Exts. A23 to A25 and as a consequence, respondents 7 to 11 were incompetent to continue as member of the Board of Directors. In other words, it was contended that three of the members of the Board had been validly removed and three others elected in their places and three other share-holders were also elected to the places vacated by the members of the Board whose term had expired. According to the appellants, the meeting held on 28-9-1994 was validly held and therefore there was no further occasion for the holding of an Annual General Meeting on 29-10-1994 and hence the holding of any such meeting also should be restrained in addition to preventing those members who had ceased to be members, from functioning as member of the Board of Directors. The application for injunction was opposed by the respondents therein and the court posted the interim application for counter to 20-10-1994. On the request of the respondents, the petition was again adjourned to 24-10-1994. Due to some confusion, the petition was not called on 24-10-1994 and hence the appellants filed an application for advancing the hearing of I.A. 7929 of 1994. The application was taken up and posted to 27-10-1994. It is to be noted that the postponed

Annual General Meeting was to take place on 29-10-1994. Arguments were heard on 27-10-1994 ahnd 28-10-1994 and on 29-10-1994 the Court passed an order refusing to grant the interim injunction prayed for by the appellants. Subsequently a meeting was held on 29-10-1994 and it was adjourned for direct polling to 31-10-1994 and for proxies to 1-11-1994. Meanwhile on 31-10-1994. the appellants moved this court by O.P. 15167 of 1994 at 1.45 P.M. seeking an order restraining the polling fixed for 31-10-1994 and 1-11-1994. The main prayer in the Original Petition was for the issue of a direction to the Subordinate Judge's Court of Trichur to issue a certified copy of the order in I. A. 7929 of 1994. urgently. This court granted the main relief and directed the Subordinate Judge's Court of Trichur to issue a copy immediately but refused to stay the polling fixed for 31-10-1994 and 1-11-1994. The copy of the order was issued to the appellants on 5-11-1994. Meanwhile on 2-11-1994, the results were announced after the the poll. This Civil Miscellaneous Appeal was filed by the appellants on 11-11-1994 challenging the refusal of the court below to grant reliefs to them in 1. A. No. 7929 of 1994. The learned Advocate General took notice on behalf of the contesting respondents and at the request of counsel appearing in the case, the Civil Miscellaneous Appeal itself was heard finally.

4. The main contention urged by Mr. T.R. Govinda Warriar Senior Counsel appearing on behalf of the appellants was that the Board of Directors having convened the Annual General Meeting in terms of Section 166 of the Companies Act for 28-9-1994, their power in that behalf was exhausted and they had no authority or power to adjourn or postpone the meeting once convened. He submitted that though the obligation to hold the Annual General Meeting may itself be a statutory obligation in view of Section 166 of the Companies Act, the power to call for a meeting vested in the Board of Directors is not a statutory power but is only a power traceable to the Articles of Association of the Company. In other words, according to him, this is only a power vested in the Board of Directors by virtue of a contract among the share-holders. He therefore submitted that any power to postpone or adjourn an already convened Annual General Meeting must be looked for in the Aricles of Association of the company and in the absence of conferment of any such power by the Articles of Association, the Board of Directors cannot in law exercise any power to postpone the Annual General

Meeting fixed for 28-9-1994. He therefore submitted that the theory that a power to do something confers also a power not to do the thing or the power to convene a meeting would take in a power to adjourn or postpone it traceable to Section 21 of the General Clauses Act, cannot have any application in the case of the company. He also submitted that the position in law was that the Directors of a Limited Company in the absence of express authority in the Articles of Association, have no power to postpone a general meeting of a company properly convened. He cited Smith v. Paringa Mines Ltd. 1906 (2) Ch D 193 in support of this contention. He also cited passages from Palmar on Company Law 23rd Edn. Vol. I. page 743 and Pennington on Company Law 4th Edn. Page 560 in support of his submission. He also strongly relied on the decision of the Supreme Court in Chandrakant Khaire v. Shantaram Kale, AIR 1988 SC 1665 and a passage from Shackleton on Meetings 4th Edn. page 169. The learned Advocate General on the other hand submitted that the decision in Chandrakant Khaire's case has been discussed and clarified by the Supreme Court in J.M. Patel v. A.S. Mehta AIR 1989 SC 1289. He also submitted that by virtue of the Articles of Association the Board of Directrors Act on behalf of the company and if under the Articles of Association they have the right to call the statutory meeting under Section 166 of the Companies Act, they have equally the power to postpone or adjourn it as incidental to their power of convening the meeting. He submitted that a situation where no power is conceded to the Board of Directors of a company for postponing or adjourning an Annual General Meeting already convened, would be intolerable and so long as the Board of Directors have exercised their power bona fide, there is no question of challenging the action of the Board as one without authority. Since prima facie the entire controversy in this Civil Miscellaneous Appeal principally turns round the validity or otherwise of the postponement of the Annual General Meeting from 28-9-1994, I shall consider this aspect immediately.

5. Section 166 of the Companies Act insists that every company shall in each year hold its Annual General Meeting and not more than 15 months shall elapse between the date of one Annual General Meeting and that of the next. The further proviso confers on the Registrar of Companies the power to extend the time within which any Annual General Meeting shall be held, by a period not exceeding three months, for any special reason. Thus the obligation to call for the Annual General

Meeting is a mandate of the statute. The Articles of Association of the Company in question under Article 41, authorises the Board to hold the Annual General Meeting specifying the meeting convened as such, in the notice calling it. Article 43 confers power on the Board to call an extraordinary meeting of the company on requisition as specified in Section 168 of the Companies Act. Articles 44 - 49 lay down the procedure that should be followed at the meetings of the company. Article 47 deals with the power of the Chairman of the meeting to adjourn the meeting with the consent of the meeting, having the necessary quorum. It could be seen on a reference to these articles that all that the Articles have done is to confer on the Board the power to call for the Annual General meeting of the company, namely, the Bank.

6. In Smith v. Paringa Mines Ltd. the Articles of Association of the company contained no provision for the postponement of a general meeting but they empowered the Directors to determine the time and place at which general meetings should be held. The question that arose was whether the Board of Directors had the authority to postpone a general meeting which had already been called. Kekewich, J. held as follows:--

'..... That being so, it was competent for the Board two convene a meeting of the share-holders, and a meeting was convened for a certain day. It matters not why, but Blair, not wishing the meeting to take place at the time and place at which it was convened, purported to postpone it by a notice of postponement. I will assume that that notice was duly issued by the authority of the board, and was given at the proper time and to every shareholder. I entirely agree with the opinion given by counsel that it was not competent for the board to postpone the meeting. The articles provide for the adjourment of a general meeting in certain events, but they contain no provision of postponement. It is said that the directors must be able to postpone the meeting because they may fix the time and place at which the meeting is to be held; but in my opinion that is not so. On the other hand, if the directors had power to postpone, and a meeting adverse to the directors was called, they might postpone it for a week or a month, or perhaps sine die. I cannot see that there is any doubt upon the point .....'

Various text books on Company Law cited by Mr. T. R. Govinda Wariyar relied on the above decision to advance a proposition that the Board of Directors may not have power to postpone a meeting which has already been convened. The same view has been expressed also in Shackleton on The Law and Practice of Meetings. The Supreme Court had occasion to deal with this aspect in Chandrakant Khaire v. Shantaram Kale, AIR 1988 SC 1665 wherein their Lordships observed as follows at Page 1672:--

'A properly convened meeting cannot be postponed. The proper course to adopt is to hold the meeting as originally intended, and then and there to adjourn it to more suitable date. If this course be not adopted, members will be entitled to ignore the notice of postponement, and, if sufficient to form a quorum, hold the meeting as original convened and validly transact the business thereat. Even if the relevant rules do not give the chairman power to adjourn the meeting, he may do so in the event of disorder. Such an adjournment must be for no longer than the Chairman considers necessary and the chairman must, so far as possible, communicate his decision to those present'.

7. But the Supreme Court had occasion to consider this question again in the subsequent decision in J. M. Patel v. A. S. Mehta, AIR 1989 SC 1289. In the said decision after referring to Chandrakant Khaire's case their Lordships observed that the question in Chandrakant Khaire's case was relating to an adjournment of a meeting whereas the question involved in J. M. Patel's case related to the cancellation of a notice convening the meeting. After referring to the decision in Smith v. Paringa Mines Ltd. their Lordships held that the powers of the Mayor of a Corporation under the Bombay Municipal Corporation Act did not arise out of a compact as in the case of Directors of a Company but are essentially statutory in nature. But after saying thus, their Lordships proceeded to add that Chandrakant, Khaire's case was not a case where a notice convening a meeting was cancelled and later a notice convening another meeting was issued, but it was a case where a meeting duly convened had commenced and it was alleged that the Municipal Commissioner had adjourned it without there being any resolution to that effect and therefore the observations in Chandrakant Khaire's case were not applicable to the case before them. Referring to an earlier decision of the Supreme Court in

Mohd. Yunus Saleem v. Shiv Kumar Shastri, AIR 1974 SC 1218 and to Section 21 of the General Clauses Act, their Lordships proceeded to hold that the Mayor in that case who had the power to convene a meeting had also the power to postpone a meeting which was duly convened before the said meeting commenced and to convene the same on a subsequent occasion. Their Lordships also observed that this power must be exercised bona fide and for justified purposes. In other words, in J. M. Patel's case the Supreme Court took the view that the power to postpone a meeting which is called, is inherent in the authority that convened the meeting and the only question was whether that authority had acted bona fide in postponing the originally scheduled meeting. Of course, the decision in J. M. Patel's case was also not one where the powers arising out of a compact alone was involved, unlike in the present case.

8. The learned Advocate General appearing on behalf of the respondents submitted that whenever a power is conferred on a body to do something, incidental power of postponing the doing of it or of doing it in a proper manner, must also be vouchsafed to the body concerned and from that point of view the Board of Directors conferred with the power under Article 41 of the Articles of Association must be conceded the power to postpone the meeting if the circumstances warranted such postponement. He also contended that the present case is covered by the ratio of the decision in J. M. Patel's case.

9. According to me, the present case is not one which can be said to be identical with the problem involved in J. M. Patel's case or for that matter, in Chandrakant Khaire's case. But the observations in J. M. Patel's case that the observations based on Smith v. Paringa Mines Ltd. to a case of a compact may tend to support the submission of Mr. Wariyar that the case on hand is covered by the principle enunciated in Smith v. Paringa Mines Ltd. reinforced by the observations in Chandrakant Khaire's case, But, there is another aspect that requires to be considered. I belive that the decision in this case cannot be rested merely on the principle set out in Smith v. Paringa Mines. It is necessary to consider the position of the Board of Directors of a modern day company and the extent of their power and obligations vis-a-vis the, general body of shareholders. They are the agents of the Company. As such they are clothed with the powers and duties of carrying on

the whole of its business, subject, however, to the restrictions imposed by the articles and statutory provisions.

10. A company though a legal entity, cannot act by itself but can act only through its Directors. The holding of an Annual General Meeting is a statutory obligation of the Company. By Article 41 a duty has been cast on the Board of Directors to call the Annual General Meeting of the bank by issuing a notice specifying the meeting as such. A company, normally acts through its Board of Directors who hold a fiduciary position. It is in discharge of the obligation cast on them by Article 41, that the Directors of the bank call the Annual General Meeting. The question has to be considered whether the obligation, duty or right conferred on the Board of Directors of the bank to call the Annual General Meeting of the bank as insisted on by Section 166 of the Companies Act, confers on them an incidental or ancillary power to postpone the Annual General Meeting which they had called by the issuance of the notice contemplated by Article 41 of the Articles of Association. It we go strictly by the principles enunciated in Smith v. Paringa Mines Ltd., the position in the present case would be that once the Board of Directors had called the Annual General Meeting, their power under Article 41 had become exhausted and they could no more postpone the Annual General Meeting or fix another day for the Annual General Meeting. As observed by Satish Chandra, J. in Rajpal Singh v. State of U.P., (1968) 1 Com LJ 21 : (1967 All LJ 1019), it will be an undue restriction on the power of the Board, if it were to be held that the Board would not have the implied or the ancillary power to postpone an annual General Meeting for which they have issued a notice. Further, as observed by Lord Denning MR in Panorama Developments v. Fidelis Fabrics, (1971) 3 All ER 16, times have changed and a strict view as the one adopted in Smith v. Paringa Mines Ltd. would cause considerable practical difficulties in the working of a company. The company normally acts through its Board of Directors and if the Board of Directors arc held to be not even having the power of discretion to take steps or to alter the steps taken to fulfil the statutory obligations of the Company, within the framework of the Statute, it will impede the smooth working of the company. In a given situation the Court would also be justified in implying a term, if necessary, to give efficacy in the business sense, to the article of a company, to make it smoothly workable.

11. Section 291 of the Companies Act confers on the Board of Directors of a Company, subject to the provisions of the Act, the power to exercise all such powers and to do all such acts and things as the Company is authorised to exercise and do. This would indicate that the imposition of the duties by Article 41 on the Board of Directors, to fulfil the statutory obligation of the company under the Act, to hold an Annual General Meeting, can be fulfilled by the Board of Directors within the framework of the Act and the Articles of Association. It is not contended that there is anything in the Companies Act or in the Articles of Association which precludes the Board of Directors of the Bank from postponing or adjourning the Annual General Meeting of the Bank which has been called but which has not actually commenced. The observations in J. M. Patel's case if understood in this context, would enable this Court to prima facie hold, that the Board of Directors of the Bank had the authority, if the circumstance warranted, to postpone the Annual General Meeting. In that view, I am not in a position to agree, prima facie, with the contention of Mr. Wariyar that the power of the Board of Directors stood exhausted, the moment they issued the notice calling the Annual General Meeting of the company.

12. Once it is found that if the circumstances warranted, the Board of Directors could postpone an Annual General Meeting already called for a future date or could fix another day for the meeting proposed to be held, before the meeting has actually commenced, the only other question that could arise for consideration is whether the Board of Directors, in the case on hand, had acted bona fide in postponing the Annual General Meeting. In that context, it is pointed out by the learned Advocate General appearing on behalf of the Bank that there is no case in the pleadings for the plaintiffs that there was no justification for postponing the Annual General Meeting. He points out that there is also no case in the pleadings that the adjournment of the meeting was mala fide or that any undue advantage was gained by the Board of Directors by the postponment of the Annual General Meeting. While considering the question whether, prima facie, the Board had acted bona fide, this aspect of the pleadings cannot be completely lost sight of.

13. In the case of hand, resolutions had been handed over by certain individual shareholders proposing to move an ordinary resolution for the removal of three of

the existing Directors. Though the Company Secretary suported by the authority of a decision of the Karnataka High Court held that the resolutions were in order and placed before the Board for decision as to their inclusion in the Agenda for the Annual General Meeting, the Board felt that legal opinion was necessary for the purpose of deciding whether the resolutions were in order of whether they were bad for non-compliance with Section 188 of the Companies Act. The legal advise to the Bank took the view that since it related to the removal of the Directors of a Company, a power which is conferred under Section 284 of the Companies Act on the Company, the resolution by an individual member for the removal of a Director in office cannot be held to be valid and such a resolution has to be in compliance with Section 188 of the Companies Act. I do not thing that it is for this Court at this interlocutory stage, to consider whether the legal advice so tendered to the Bank was correct or not. There cannot be any doubt that the legal advice was tendered bona fide and the Board of Directors cannot be said to have acted without bona fides in accepting the advice tendered by the legal adviser. Prima facie, therefore I am not satisfied that the Board of Directors acted improperly in accepting the advice of the legal adviser of the Bank in so far as it related to the resolutions demanding the removal of the existing directors.

14. Mr. Wariyar argued that the minutes of the Board of Directors would show that the Board of Directors were not fair in dealing with the question of postponment of the Annual General Meeting. He pointed out that the Reserve Bank nominee Directors disassociated themselves with the resolution suggesting postponment and even the members of the Board for whose removal notices had been given had also participated in the decision. He also contended that all the facts were not disclosed to the Registrar of Companies before obtaining the permission to postpone the Annual General Meeting. He also submitted that even assuming that the resolutions for removal of the members of the Board were not in order, all that was required was to reject those resolutions and there was absolutely no necessity to postpone the Annual General Meeting itself. Mr. Advocate General appearing on behalf of the Bank, on the other hand, contended that considerable confusion had been created by the news items appearing in the newspapers regarding the Annual General Meeting of the Bank and the Board of Directors in all bona fides took a decision to postpone the Annual General Meeting especially in

the context of the speculations aired in the press and given vide publicity as to whether the Annual General Meeting would be held as originally called. I do not think that without evidence to be addufed by the parties these important questions can be decided prima facie. The aspect of the bona fides of the decision of the Board of Directors regarding the postponing of the Annual General Meeting itself merely because of a doubt in their minds regarding the validity of the resolutions to remove the existing members of the Board has to be seriously considered to the evidence to be adduced in the case at the time of the final disposal of the suit. I am of the view that it will be premature for this Court to pronounce on this aspect even prima facie at this stage. But considering the circumstances that existed at the relevant time and the controversies aired in the press, prima facie, I do not think that it is possible to hold that the Board of Directors were totally unjustified in postponing the Annual General Meeting itself. In other words I am not satisfied that I will be justified without the entire evidence being in coming to a conclusion that the Board of Directors acted mala fide in postponing the Annual General Meeting originally called by them.

15. In view of my conclusions as above, prima facie, I do not think it necessary to go into the various other questions that were raised and argued before me by Mr. Wariyar on behalf of the plaintiffs and the Advocate General on behalf of the respondent. Since I have already held that the Board of Directors had prima facie, the power, either incidental or ancillory, to postpone the Annual General Meeting and the postponment has not prima facie been shown to be vitiated by absence of bona fides on their part, I am necessarily in agreement with the conclusion of the Court below that the injunction prayed for by the plaintiffs need not be granted.

16. The question of the balance of convenience has also to be considered. The company is a Banking institution having a number of branches. An injunction of the nature prayed for may hamper the smooth working of the institution. Even if the meeting held on 28-9-1994 by a group of shareholders is ultimately to be held as valid, still a question whether the removal of the three existing Directors and the election of three others in their places valid would arise for consideration. It has to be noted that the said business was not in the agenda for the Annual General Meeting and the resolutions in that behalf had been ruled out earlier by the Board

of Directors. Considerable confusion may also be generated by restraining some of the members of the Board from functioning. Thus on an overall view, the balance of convenience cannot be said to be in favour of the grant of an interim injunction. If ultimately in the suit, it is held that the removal of the three Directors was proper and the election of three Directors in the place of the retiring Directors at the meeting held on 28-9-1994 was also proper and valid, the constitution of the Board of Directors could be rectified in the light of that decision. No irreparable injury will be caused to the plaintiffs in that case since the Bank's functioning is properly and statutorily regulated. It must also the noticed that the present suit is not one in a representative capacity, as emphasised by learned Advocate General.

In view of what is stated above, I am not satisfied that the order of the Court below requires to be interfered with I therefore confirm the order of the Court below and dismiss this Civil Miscellaneous Appeal. There shall be no order as to costs, save that each party bear his own, in this appeal and in the Court below. But in the circumstances of the case, I think it appropriate to direct the trial Court to expedite the trial and disposal of the suit. The trial Court is directed to dispose of the suit without fail, on or before 22-12-1995.